Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

23 March 2022 *

(Civil service – Members of the temporary staff – Staff of eu-LISA – Disciplinary proceedings – Disciplinary penalty – Reprimand – Implementing provisions concerning administrative inquiries – Plea of illegality – Article 110 of the Staff Regulations – Failure to consult the Staff Committee – Rights of the defence and right to be heard – Articles 12, 12a, 17 and 19 of the Staff Regulations – Error of assessment – Principle of good administration – Article 10 of Annex IX to the Staff Regulations – Duty to have regard for the welfare of officials – Liability – Non-material damage)

In Case T-661/20,

NV, represented by S. Rodrigues and A. Champetier, lawyers,

applicant,

v

European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), represented by M. Chiodi, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers

defendant,

APPLICATION under Article 270 TFEU seeking, first, annulment of the decision of eu-LISA of 3 February 2020 to impose on the applicant the penalty of a reprimand and, secondly, compensation for the non-material harm allegedly suffered by the applicant as a result of that decision,

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni, President, L. Madise and J. Martín y Pérez de Nanclares (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: English.

Judgment [1]

I. Background to the dispute

1 The applicant, NV, was recruited on 16 October 2012 by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) as a member of the temporary staff (grade AD 7, step 2) within the meaning of Article 2(a) of the Conditions of Employment of Other Servants of the European Union. He held the post of Application Administrator which, from 1 September 2019, became the post of Information Technology Officer (grade AD 7, step 5).

2 On 19 October 2018, the applicant reported, by an email sent to several recipients, an incident in which A, another member of staff of eu-LISA and a work colleague, threatened him verbally and physically. More specifically, that member of staff took a chair and threatened to hit the applicant with it, before being stopped by another colleague.

3 On the same day, the applicant was placed on sick leave and informed the police that he feared for his safety and that of his family.

4 On 21 October 2018, following the incident referred to in paragraph 2 above, the applicant submitted a request for assistance in respect of A, on the basis of Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

5 By decision of the Executive Director of eu-LISA of 15 February 2019, of which the applicant was informed the following day, an administrative inquiry was opened in order to establish all the relevant facts and circumstances relating to the allegations of psychological harassment made by the applicant against A. By that decision, a retired official of the European Commission was appointed to direct the inquiry ('the investigator').

6 On 4 March 2019, the applicant was interviewed by the investigator in the context of the inquiry. During that interview, the applicant had the opportunity to present the facts which led him to submit a request for assistance and provided examples of the alleged acts of harassment committed by A. The record of that interview was then sent to the applicant, who returned a signed copy of it to the investigator, stating that the record did not represent a full or complete transcript of his interview and his questions

7 On 22 May 2019, the applicant was informed that a decision of eu-LISA's Executive Director extended the scope of the administrative inquiry to include breaches of obligations under the Staff Regulations committed both by the applicant and by A. It had come to light, in the course of the investigation, that the applicant had failed to fulfil his obligations under Articles 11, 12, 17 and 19 of the Staff Regulations with respect to A, but also independently of his relationship with A. More specifically, the applicant's conduct was likely to increase tensions with A, to impair A's working conditions and to discredit him. Furthermore, the applicant's conduct on several occasions was inappropriate with regard to two members of eu-LISA's security staff. Lastly, the applicant infringed the obligation to seek prior authorisation before contacting the French police in order to report his conflictual relationship with A.

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

8 On 16 July 2019, the applicant was interviewed a second time by the investigator. During that second interview, the applicant had the opportunity to provide explanations in response to the allegations of breaches of the Staff Regulations made against him. The record of that second interview was then sent to him on 18 July 2019.

9 On 28 July 2019, the applicant received two additional documents, namely two reports which contained the allegations of two members of eu-LISA's security staff criticising his conduct towards them.

10 On 21 August 2019, a preliminary version of the conclusions of the inquiry report was sent to the applicant.

...

14 On 10 September 2019, the investigator completed his report after, inter alia, hearing 27 witnesses and examining the applicant's observations. In his final report, the investigator concluded that the applicant had committed a serious breach of Article 12a of the Staff Regulations, occasional breaches of Article 12 of the Staff Regulations and breach of Articles 17 and 19 of the Staff Regulations.

...

16 By letter of 18 November 2019, eu-LISA's Executive Director informed the applicant that, in the light of the findings of the administrative inquiry, he intended to impose a reprimand on him pursuant to Article 11 of Annex IX to the Staff Regulations. The applicant was thus invited to exercise his right to be heard either by attending a hearing on 27 November 2019 or by submitting written observations. A redacted version of the final inquiry report was attached to the letter.

...

18 On 27 November 2019, the hearing took place in the presence of the applicant and eu-LISA's Executive Director. The Senior Legal Officer, the Head of the Human Resources Unit and a legal officer attended the hearing by videoconference. At the hearing, the applicant had the opportunity to provide his comments and explanations concerning the reprimand measure envisaged by eu-LISA's Executive Director.

...

20 On 9 December 2019, the record of the hearing of 27 November 2019, referred to in paragraph 18 above, was sent to the applicant. The applicant had the opportunity to submit his observations within 11 working days, which he did on 3 January 2020.

21 By letter of 3 February 2020 ('the contested decision'), eu-LISA's Executive Director informed the applicant that:

'Following a thorough examination of your file and, in particular, after having taken duly into account your concerns and your written comments with respect to the procedural aspect of the inquiry (and especially after having checked again whether any procedural error had been committed during the inquiry, and after having reached the conclusion that there were no

mistakes on [eu-LISA's] part) together with the comments made by you on 3 January 2020, I therefore regret to inform you that a reprimand is applied to you and will be part of your personal file.'

22 The applicant also received from eu-LISA's Executive Director a document dated 16 March 2020 entitled 'Closure of the inquiry opened on 15 February 2019 – Communication of the outcome of procedure to [applicant's name]'. That document stated, inter alia, that, after checking the applicant's complete file, the Executive Director had come to the conclusion that he had committed the breaches set out in the final inquiry report (see paragraph 14 above). According to the Executive Director, all the applicant's rights had been respected during the investigation procedure. Thus, it had been decided that a reprimand should be imposed on him. As regards A, it was found that he had breached Articles 11 and 12 of the Staff Regulations. Similar proceedings had taken place against A, who had, as a consequence, been the subject of a disciplinary penalty and had also been reprimanded, as provided for in Article 9 of Annex IX to the Staff Regulations.

...

III. Law

30 In his action, first, the applicant seeks annulment of the contested decision and of the decision rejecting the complaint. Secondly, he claims the amount of EUR 5 000, fixed *ex aequo et bono*, as compensation for the non-material damage which he claims to have suffered on account of the adoption of the contested decision.

A. The claims for annulment

...

2. The application for annulment of the contested decision

34 In support of his application for annulment of the contested decision, the applicant puts forward four pleas in law. The first plea alleges that the implementing provisions concerning administrative inquiries adopted by the Management Board of eu-LISA are unlawful. The second plea alleges infringement of the rights of the defence and of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), and of the right to be heard. The third plea in law alleges infringement of Articles 12, 12a, 17 and 19 of the Staff Regulations, breach of the principle of good administration and errors of assessment. The fourth plea alleges infringement of Article 10 of Annex IX to the Staff Regulations and breach of the duty to have regard for the welfare of officials.

(a) The first plea, alleging the illegality of the implementing provisions concerning inquiries

35 By his first plea, the applicant disputes the legality of the implementing provisions concerning administrative inquiries, the adoption of which was finalised on 18 October 2014, without prior consultation of the Staff Committee (constituted on 5 November 2014). Those provisions, now contained in the decision of the Management Board of eu-LISA (2015-014) of 28 January 2015,

on which the Executive Director's decisions to open an administrative inquiry, and to extend that inquiry, dated 15 February and 22 May 2019, respectively, were based (see paragraphs 5 and 7 above), are unlawful.

36 More specifically, the implementing provisions concerning administrative inquiries were adopted in breach of Article 110(1) of the Staff Regulations, on the ground that, contrary to the provisions of that article, the Staff Committee of eu-LISA was not consulted before they were adopted.

...

38 As a preliminary point, it should be recalled that, according to Article 110(1) of the Staff Regulations, 'the general provisions implementing these Staff Regulations shall be adopted by the appointing authority of each institution after consulting the Staff Committee and the Staff Regulations Committee'.

39 In the present case, it is not disputed that the Staff Committee was not consulted before the adoption of the implementing provisions concerning administrative inquiries on the ground that the Staff Committee had not yet been constituted when those provisions were adopted on 18 October 2014. Furthermore, in the preamble to Commission Decision C(2014) 5392 final of 28 July 2014 on the agreement on the implementing rules for giving effect to the Staff Regulations adopted by eu-LISA, the following is stated:

'Having regard to the fact that the Staff Committee of the eu-LISA, which is to be consulted pursuant to Article 110 of the Staff Regulations, has not yet been constituted and it is therefore impossible at the present to comply with the requirements of that provision. The Staff Committee will be invited to give its opinion on the relevant implementing rules when it has been constituted and due consideration will be given to its opinion. The Management Board is entitled in such circumstances to approve the rules forthwith.'

40 Before assessing whether the plea of illegality raised, namely eu-LISA's failure to consult its Staff Committee at the time of the adoption of the implementing provisions concerning administrative inquiries, is capable of leading to a finding that those implementing provisions are unlawful, it is necessary to examine the admissibility of the plea that those provisions are unlawful and of the plea itself.

41 In that regard, it should be recalled that, under Article 277 TFEU, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in the second paragraph of Article 263 TFEU in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

42 Article 277 TFEU gives expression to a general principle conferring upon any party to proceedings the right to challenge incidentally, with a view to obtaining the annulment of a decision addressed to that party, the validity of acts of general application which form the legal basis of that decision (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 67 and the case-law cited).

43 Since the purpose of Article 277 TFEU is not to allow a party to contest the applicability of any act of general application in support of any action whatsoever, the act the legality of which is called in question must be applicable, directly or indirectly, to the issue with which the action is concerned (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 68 and the case-law cited).

44 Thus, in an action for annulment brought against individual decisions, the Court of Justice has accepted that the provisions of an act of general application that constitute the basis of those decisions or that have a direct legal connection with such decisions may legitimately form the subject matter of an objection of illegality (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 69 and the case-law cited).

45 By contrast, the Court of Justice has held that an objection of illegality covering an act of general application in respect of which the individual decision being challenged does not constitute an implementing measure is inadmissible (see judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 70 and the case-law cited).

46 It is in the light of those considerations that it must be determined whether, in the present case, there is a direct legal connection between the contested decision and the implementing provisions concerning administrative inquiries.

47 In that regard, it should be noted that the applicant confines himself to maintaining that the formal condition, laid down in Article 110 of the Staff Regulations, that the Staff Committee is to be consulted before the adoption of the implementing provisions concerning administrative inquiries was not satisfied. Such a claim was raised after the inquiry conducted against him had been closed and after that inquiry had decided, by the contested decision, to impose a reprimand on him.

48 More specifically, according to the applicant, the fact that eu-LISA did not wait for the constitution of a Staff Committee before adopting the implementing provisions concerning administrative inquiries means that those provisions were adopted in breach of an ‘essential procedural requirement’. The applicant concludes from this that the Executive Director’s decision of 15 February 2019 to open an administrative inquiry (see paragraph 5 above) and the Executive Director’s decision of 22 May 2019 to extend the scope of that inquiry (see paragraph 7 above), adopted pursuant to the implementing provisions concerning administrative inquiries, were in turn unlawful. Lastly, he submits that the contested decision, adopted following the inquiry carried out pursuant to the decision of 22 May 2019, must in turn be regarded as unlawful, on the ground that the unlawfulness of the implementing provisions concerning administrative inquiries leads, on the basis of a ‘domino’ effect, to the unlawfulness of the contested decision.

49 However, contrary to what the applicant maintains in his reply to the measure of organisation of procedure, referring to a judgment of the Court partly annulled on appeal (judgment of 2 October 2001, *Martinez and Others* v *Parliament*, T-222/99, T-327/99 and T-329/99, EU:T:2001:242, paragraph 135), the recent case-law (see paragraphs 44 and 45 above) does not extend the scope of Article 277 TFEU to any act of the institutions which, in general, is relevant for the adoption of the decision which is the subject of the action for annulment.

50 On the contrary, it is apparent from the case-law (see paragraphs 44 and 45 above) that, in order for a plea of illegality in respect of an act of general application to be held to be admissible, it is necessary to establish a 'direct legal connection' between the contested measure and the measure which is the subject of the plea of illegality.

51 In the present case, it must be stated that the contested decision is not in any way based on elements connected with the implementing provisions concerning administrative inquiries, but only on the infringement of provisions of the Staff Regulations, established in the final inquiry report (see paragraphs 14 and 22 above).

52 The contested decision does not constitute a measure implementing the implementing provisions concerning administrative inquiries. That decision, as eu-LISA rightly points out, was adopted on the basis of Article 9(1)(b) of Annex IX to the Staff Regulations and not on the basis of the implementing provisions concerning administrative inquiries.

53 The finding that there is no direct legal connection between the contested decision and the implementing provisions concerning administrative inquiries is all the more evident if account is also taken of the fact that the Court has held that there must be a close connection between the reasoning of the contested decision and the plea of unlawfulness of the act of general application (see, to that effect, judgment of 14 December 2017, *PB* v *Commission*, T-609/16, EU:T:2017:910, paragraph 29).

54 No close connection can be found between, on the one hand, the grounds of the contested decision, based on a serious breach of Article 12a of the Staff Regulations, occasional breaches of Article 12 of the Staff Regulations and breach of Articles 17 and 19 of the Staff Regulations (see paragraph 22 above) and, on the other hand, the plea alleging the unlawfulness of the implementing provisions concerning administrative inquiries based on the failure to consult the Staff Committee before the adoption of those provisions.

55 Moreover, it is not apparent from the documents in the file that the failure to consult the Staff Committee before the adoption of the implementing provisions concerning administrative inquiries had any effect on compliance with procedural safeguards during the inquiry, or on the actual content of the contested decision.

56 In that regard, it should be noted that, as will be stated in the analysis of the second plea, alleging infringement of the applicant's rights of defence and right to be heard, the conduct of the administrative procedure does not reveal any evidence capable of infringing the applicant's rights of defence (see paragraph 91 below). Moreover, the Executive Director, in the document dated 16 March 2020, states that he examined the applicant's complete file and concluded that his rights had been respected during the inquiry procedure (see paragraph 22 above).

57 Moreover, Article 110 of the Staff Regulations lays down the requirement that the Staff Committee be consulted before the adoption of the implementing provisions concerning administrative inquiries. However, it is clear from the case-law that the consultation of the Staff Committee, referred to in Article 110 of the Staff Regulations, does not imply that the opinion of that committee is followed (see, to that effect, judgment of 16 July 2015, *Murariu* v *EIOPA*, F-116/14, EU:F:2015:89, paragraph 86 and the case-law cited).

58 Thus, the existence of a direct or close legal connection between the implementing provisions concerning administrative inquiries and the contested decision has not been established.

59 In any event, the fact that the Staff Committee was not consulted is not sufficient to show that the implementing provisions concerning administrative inquiries could have been different and that the applicant was deprived of procedural safeguards.

60 In addition to the assessment made in paragraph 57 above, it is apparent from the documents before the Court that the implementing provisions concerning administrative inquiries were 'draft-reviewed' by the administrator who was appointed Chair of eu-LISA's Staff Committee when it was established, namely on 5 November 2014. Thus, to a certain extent, it may be considered that, at the very least, the future Chair of the Staff Committee was able to express his opinion on the implementing provisions concerning administrative inquiries before they were adopted.

61 In addition, it should be noted that, by letter of 16 June 2014, the Executive Director of eu-LISA made enquiries with the Commission's Directorate-General for Human Resources concerning, inter alia, the status of the implementing provisions concerning administrative inquiries. On that basis, by decision of 28 July 2014, the Commission authorised eu-LISA to submit those provisions to its Board of Directors so that it could adopt them.

62 Moreover, first, as was appositely pointed out by eu-LISA, the procedure for the adoption of the implementing provisions concerning administrative inquiries ended on 18 October 2014 without any objections from the members of the Management Board composed of representatives of each Member State and of the Commission. Secondly, since its creation, the Staff Committee did not request, during the inquiry in question, that the implementing provisions concerning administrative inquiries be reviewed, nor did it raise any objections with regard to the wording of those provisions.

63 In the light of the circumstances of the present case, namely that the adoption of the implementing provisions concerning administrative inquiries was authorised by the Commission, that the future Chair of the Staff Committee revised those provisions and that the Staff Committee never asked to review those provisions, the failure to consult the Staff Committee in advance cannot have had any effect on the procedural safeguards enjoyed by the applicant.

64 In the light of all the foregoing, it must be concluded that, in the circumstances of the present case, the existence of a direct legal connection between the implementing provisions concerning administrative inquiries and the contested decision has not been established. Furthermore, the failure to consult the Staff Committee before the adoption of the implementing provisions concerning administrative inquiries cannot, in the light of the considerations set out in paragraphs 59 to 62 above, have had any impact on the content of those provisions or, consequently, on the lawfulness of the contested decision.

65 The first plea in law must therefore be rejected.

...

(c) Third plea in law, alleging infringement of Articles 12, 12a, 17 and 19 of the Staff Regulations, breach of the principle of good administration and 'manifest errors of assessment'

93 In his third plea, the applicant makes a number of complaints. The first complaint alleges infringement of Article 12a of the Staff Regulations, breach of the principle of good administration and 'manifest errors of assessment'. The second complaint alleges infringement of Articles 17 and 19 of the Staff Regulations. The third complaint alleges infringement of Article 12 of the Staff Regulations.

...

(2) The second complaint, alleging infringement of Articles 17 and 19 of the Staff Regulations

124 The applicant maintains that he clearly did not infringe Articles 17 and 19 of the Staff Regulations and that the interpretation of those provisions in the decision rejecting the complaint is incorrect and must lead to its annulment.

125 As regards the alleged infringement of Article 17 of the Staff Regulations, the applicant submits that the scope of Article 17 of the Staff Regulations is strictly limited to the disclosure of information related to the performance of duties. He did not transmit to the police (see paragraph 3 above) any 'information' received in the line of duty. Furthermore, eu-LISA has not shown which information relating to the applicant's performance of his duties was disclosed. The applicant has stated only that he feared for his physical integrity and that of his family, in the private sphere outside eu-LISA.

126 According to the applicant, he informed eu-LISA in advance of A's reprehensible conduct, as is apparent from the various emails produced before the Court. It is in particular the case that he did not receive a reply from the administration, which led him, first, to lodge his request for assistance and, secondly, to inform the police of his situation, on the ground that he had a legitimate fear for his physical integrity and that of his family.

127 As regards the alleged infringement of Article 19 of the Staff Regulations, the applicant submits that making a declaration in a police incident log – a fortiori concerning a matter relating to the private sphere – cannot be regarded as being tantamount to 'disclosing in any legal proceedings' information brought to his knowledge in the performance of his duties. According to the applicant, a police officer or a person performing an administrative function at the reception of a police station cannot be regarded as a judicial authority. It follows that there is no obligation to submit an application to the Executive Director for permission to file a judicial complaint.

...

129 As a preliminary point, first, it should be recalled that Article 17 of the Staff Regulations is worded as follows:

'1. An official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

2. An official shall continue to be bound by this obligation after leaving the service.'

130 Article 19 of the Staff Regulations provides as follows:

> ‘An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings, information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Union so require and such refusal would not entail criminal consequences as far as the official is concerned. An official shall continue to be bound by this obligation after leaving the service.
>
> The provisions of the first paragraph shall not apply to an official or former official giving evidence before the Court of Justice of the European Union or before the Disciplinary Board of an institution on a matter concerning a servant or former servant of the European Union.’

131 Secondly, it is apparent from the final inquiry report and the preliminary version of the conclusions of the investigator (see paragraph 10 above) as referred to by the applicant in his complaint of 9 April 2020:

> ‘Members of staff of the [European Union] cannot, in relation to matter[s] arising at work, just report the matter to an external legal authority such as the police, thus starting a form of external legal procedure. This kind of action in such circumstances requires the authorisation of the Appointing Authority under two provisions of the [Staff Regulations], Article 17 and Article 19. There was nothing to stop [the applicant] asking the Appointing Authority for permission, which he might have received, but he did not do so, contrary to his obligations.’

132 Thirdly, it is apparent from the decision rejecting the complaint that it was established that the applicant had contacted the French police and that the fact that that step had been taken on the ground that he feared for his physical integrity or that of his family did not call into question the fact that he had not previously informed eu-LISA or requested permission and that he had therefore infringed the Staff Regulations.

133 In the first place, it is necessary to assess whether Articles 17 and 19 cover situations where an official approaches the police to report a conflictual relationship with a colleague.

134 In that regard, it has been held that the authorisation scheme laid down in Article 17 of the Staff Regulations was intended to enable the administration to ensure that the disclosure of information, received by an official in the line of duty, would not harm the interests of the Union by affecting, inter alia, its functioning and reputation. The authorisation scheme established by Article 17 of the Staff Regulations is therefore intended to enable the administration to ensure, in good time, that officials regulate their conduct with due regard to the interests of the institutions and their obligations under Article 339 TFEU. That authorisation scheme therefore seeks, inter alia, to preserve the relationship of trust which should exist between the institutions and their staff. Its implementation requires a balancing of the various interests at stake in order to determine whether the Union’s interests or the public interest in receiving information should prevail (see, to that effect, judgment of 20 January 2011, *Strack* v *Commission*, F-132/07, EU:F:2011:4, paragraphs 71 and 72). Thus, Article 17 of the Staff Regulations is intended to recall, inter alia, the obligation incumbent on an official to respect professional secrecy and imposes, in particular, the obligation to request permission to disclose information which is by its very nature covered by professional secrecy.

135 It follows that Article 17 of the Staff Regulations does not cover the situation where an official approaches the police in order to report a conflictual relationship with a colleague at his place of work. The reference to Article 17 of the Staff Regulations in the contested decision is therefore incorrect.

136 As regards the scope of Article 19 of the Staff Regulations, as defined in the first sentence of that article, it should be noted that, admittedly, the expression 'faire état en justice' in that provision gave rise to different language versions. The English version uses the general expression 'disclos[e] in any legal proceeding', whereas the Spanish, Italian and German versions use, respectively, the more specific expressions 'revelar en un procedimiento judicial' (disclose in court proceedings), 'deporre in giudizio' (to testify) and 'vor Gericht vorbringen oder … aussagen' (submit before the court or … testify).

137 However, first, it has been held that the scope of Article 19 of the Staff Regulations, as defined in the first sentence of that article, could not be interpreted restrictively so as to cover only the case of an official called upon to give evidence in legal proceedings. The scope of that article covers all situations in which an official is called upon to disclose in legal proceedings, 'in whatever capacity', information acquired by reason of that official's duties, without making a distinction between the use of such information in the course of giving evidence or in the context of the bringing of legal proceedings before a national court, for example, the lodging of a criminal complaint (judgment of 13 June 2002, *Ferrer de Moncada* v *Commission*, T-74/01, EU:T:2002:158, paragraph 48). The situation of an official called upon to give evidence in legal proceedings is therefore not the only situation covered by Article 19 of the Staff Regulations (see, to that effect, judgment of 13 June 2002, *Ferrer de Moncada* v *Commission*, T-74/01, EU:T:2002:158, paragraph 49).

138 Secondly, it must be observed that, in several Member States, the police may play a role of a judicial nature and, in particular, act at the request of a court. Moreover, contacting the police may prove necessary, or even indispensable, in order to bring legal proceedings. Lastly, a report made to the police may give rise to court proceedings or may be used in court proceedings.

139 Although it must be recognised that, to a certain extent, Articles 17 and 19 of the Staff Regulations both pursue the objective of ensuring compliance with the duty of confidentiality and, thus, of involving the institution concerned in the event of external disclosure of information which the official is privy to on account of his duties, it is nevertheless necessary to distinguish between the respective scope of those articles. Article 17 of the Staff Regulations is intended to avoid affecting the functioning and reputation of an institution and is applicable to cases in which an official wishes to disclose information which, by its very nature, is covered by the obligation of professional secrecy.

140 On the other hand, Article 19 of the Staff Regulations covers the situation in which an official wishes to disclose in legal proceedings facts related to a conflictual relationship in the workplace which are not, by their nature, covered by professional secrecy, but which could affect the functioning and reputation of an institution.

141 It should be noted that Article 19 of the Staff Regulations expressly provides for a single exception to the rule that prior authorisation must be given in order to be able to disclose in legal proceedings information acquired by an official on account of that official's duties, namely where the official or former official is called upon to give evidence before the Court of Justice of the European Union or before the Disciplinary Board of an institution, in a case concerning a member of staff or former member of staff of the European Union.

142 Furthermore, it is apparent from the restrictive wording of the second sentence of Article 19 of the Staff Regulations (see paragraph 130 above) that the 'interests of the Union' which, under that article, may justify a refusal of permission to disclose in legal proceedings work-related information must necessarily be interests of considerable importance which are vital to the European Union (see judgment of 13 June 2002, *Ferrer de Moncada* v *Commission*, T-74/01, EU:T:2002:158, paragraph 58 and the case-law cited). Thus, the situations in which authorisation may be refused are strictly limited.

143 Finally, it also follows from those restrictive references to Article 19 of the Staff Regulations and from the lack of formal requirements to request permission to disclose information which the official has knowledge by reason of that official's duties that the official or other member of staff cannot be required to obtain prior permission in situations where there is certain degree of seriousness and urgency, in particular in cases where there is an imminent danger to the official or staff member concerned.

144 In the second place, as regards whether, in the present case, the applicant infringed Article 19 of the Staff Regulations, first, it must be stated that he cannot maintain that the incident which took place with a colleague following a discussion conducted in a way which was indeed questionable, must be regarded as detached from the performance of his duties within eu-LISA and as not satisfying the criterion that it was received in the line of duty.

145 In that regard, it is apparent from the description of the incident given by the applicant himself that A returned to his office in order to discuss work matters with another colleague and that the applicant, without having been requested by A, intervened in the discussion and was thus the instigator of A's reaction, which consisted of expressing his disagreement with the applicant's intervention and brandishing a chair in front of him.

146 Secondly, it must be observed that the facts reported by the applicant to the police were not already in the public domain. Thus, the applicant was required to refrain from any disclosure of the situation which had arisen in the offices of eu-LISA in the performance of his duties, where he had not been given prior authorisation.

147 Thirdly, as regards the applicant's argument that, in accordance with Article 19 of the Staff Regulations, in an email of 16 June 2017, he had warned eu-LISA of the wrongful acts committed by A, it should be noted that the acts which the applicant reported to the police took place on 19 October 2018. Thus, that email cannot be regarded either as prior notice to eu-LISA or as a request for authorisation relating to events which occurred on that date.

148 Moreover, the applicant's email of 19 October 2018 reporting the incident which occurred on that day with A does not inform eu-LISA that he intended to report the incident to the police, nor does it contain a request for authorisation in that regard.

149 Fourthly, it should be noted that, contrary to what the applicant claims, specific information was given to the French police, who, as eu-LISA states, called the applicant's office and asked to speak to him about the facts which he had reported concerning A's aggressive behaviour threatening him by brandishing a chair.

150 Fifthly, as was rightly stated in the final inquiry report, there were no obstacles to the applicant requesting prior authorisation from eu-LISA and to receiving such authorisation. It is clear, first, that the applicant was not faced with imminent danger and, secondly, that the possibilities, referred to in Article 19 of the Staff Regulations, of refusing him that permission were very limited (see paragraph 142 above).

151 It follows that, even if it is accepted that, in certain circumstances and, in particular, in order to approach the police to report facts occurring in the workplace, it may be legitimate to derogate from the scheme of prior authorisation referred to in Article 19 of the Staff Regulations, that was not the case here, in particular because there was no imminent danger to the applicant.

152 It must therefore be held that, in so far as the applicant, without seeking prior authorisation from eu-LISA, disclosed, outside that organisation, events which took place during the performance of his duties within eu-LISA, the administration was entitled to take the view that he had infringed Article 19 of the Staff Regulations.

153 In the light of all the foregoing, the second complaint of the third plea is well founded in part, namely in so far as it alleges an error of interpretation and application of Article 17 of the Staff Regulations. However, that error, contained in the contested decision, has no effect on the lawfulness of that decision and cannot, in itself, lead to its annulment. The finding of an infringement against the applicant, consisting of not having requested permission before contacting the police, is correctly based on Article 19 of the Staff Regulations.

...

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders NV to pay the costs.

Gervasoni Madise Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 23 March 2022.

[Signatures]