Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

14 December 2017 *

(Civil service — Officials — Promotion — 2015 promotion exercise — Decision not to promote the applicant to grade AD 10 as of 1 July 2015 — Interinstitutional transfer — Pro rata temporis system — Consideration of comparative merits — Article 45 of the Staff Regulations — Liability)

In Case T-21/17,

RL, official of the European Parliament, represented by C. Bernard-Glanz and A. Tymen, lawyers,

applicant,

v

Court of Justice of the European Union, represented by J. Inghelram and V. Hanley-Emilsson, acting as Agents,

defendant,

concerning an application on the basis of Article 270 TFEU seeking, first, the annulment of the decision of the Court of Justice of the European Union of 11 May 2016 refusing to promote the applicant on 1 July 2015, and, second, compensation for the harm which the applicant allegedly suffered,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni (Rapporteur), President, K. Kowalik–Bańczyk and C. Mac Eochaidh, Judges,

Registrar: E. Coulon,

gives the following

Judgment

Legal context

1 Article 45 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides:

'Promotion shall be by decision of the appointing authority in the light of Article 6(2). Unless the procedure laid down in Articles 4 and 29(1) is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in Annex I, Section A, for the next higher

* Language of the case: French.

grade. Promotion shall be effected by appointment of the official to the next higher grade in the function group to which he belongs. Promotion shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion. When considering comparative merits, the appointing authority shall in particular take account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with point (f) of Article 28 and the level of responsibilities exercised by them.

…'

2 According to the promotion instructions annexed to the decision of the Court of Justice of the European Union of 19 October 2005 concerning promotions ('the promotion instructions'), in order to be considered for promotion, officials must, as a matter of course, have a number of promotion points at least equal to a reference threshold (point 3).

3 Point 4 of the promotion instructions states that, for each year spent in the grade in question, officials acquire between 0 and 3 promotion points. 0 points mean no promotion for the time being, 1 point corresponds to slow promotion, 2 correspond to normal promotion and 3 correspond to rapid promotion.

4 Again according to the promotion instructions, promotion points are awarded every year by the director of the directorate to which the official belongs, on the basis of his merits and, first and foremost, his staff report (point 5), and the director draws up, for each grade, an annual list of officials in his directorate who have reached the reference threshold (point 7).

5 Finally, point 8 of the promotion instructions provides that the lists are to be published and forwarded to the Joint Committee on Promotions, which, for each grade, considers the comparative merits of all officials eligible for promotion, taking account of the promotion points obtained, and establishing whether they are consistent with the staff reports. Once its work is concluded, the Committee draws up a list of officials proposed for promotion for each grade, in order of priority. That list is forwarded to the appointing authority for a decision.

6 As a general rule, in the promotion system at the Court of Justice of the European Union, the number of points obtained used to be examined on the basis of the situation of the officials concerned on 1 January of the year in question. However, a special measure was introduced in the 2006, 2007 and 2008 promotion exercises for officials recruited in certain grades after 1 May 2004, under which the points total was considered not just on 1 January of the year in question, but also on the first day of every month during the year ('the pro rata temporis measure').

7 The scope of the pro rata temporis measure was extended to other grades in 2009. More specifically, according to point 6 of the conclusions of 27 October 2009 of the consultation procedure between the administration of the Court of Justice of the European Union and the European Public Service Union concerning the promotion system in the Court of Justice of the European Union, the number of points to be taken into consideration for the purposes of promotion under the pro rata temporis measure is obtained 'by adding together … the total points on 31 December of year N-1 with, on the 1st of each month of year N, one twelfth of two points or, where the official has obtained fewer than two points for year N-1, one twelfth of the number of points actually awarded'.

8 From the 2015 promotion exercise onwards, the pro rata temporis measure was extended to all promotions up to grades AST 8 and AD 11 inclusive, irrespective of the date on which the officials in question were recruited (point 1 of the conclusions of 22 July 2015 of the consultation procedure between the administration of the Court of Justice of the European Union and the European Public Service Union — Court of Justice concerning the operation of the promotion system).

Background to the dispute

9 The applicant, RL, entered the service of the Court of Justice of the European Union on 1 October 2004 as a member of the temporary staff. He was appointed as an official on 1 March 2006.

10 On 16 March 2015, the applicant was transferred to the European Parliament. He was classified in grade AD 9, step 2, at the time of his transfer.

11 By decision of 8 July 2015, the appointing authority established the reference threshold for officials in grade AD 9 to be promoted to grade AD 10 in the 2015 promotion exercise at 8 points.

12 In response to his request, the applicant was informed by the Court of Justice of the European Union on 7 December 2015 that he had not obtained any promotion points for 2014.

13 By a letter of 11 December 2015, the applicant contested the decision not to award him any promotion points for 2014 and requested that he be awarded between 2.5 and 3 points for that year. On 10 February 2016 he also lodged a complaint against the decision not to grant him any promotion points for 2014 and against the decision not to promote him in the 2015 exercise.

14 By decision of 4 March 2016, the Registrar of the Court of Justice of the European Union, in his capacity as appointing authority and in accordance with the opinion of the Committee on Promotions, awarded the applicant 2.5 promotion points for 2014.

15 By an email of 15 March 2016 the applicant requested that the decision refusing to promote him be reviewed in the light of the award of those promotion points.

16 By an opinion of 7 April 2016, the Committee on Promotions recommended that the appointing authority confirm its decision not to promote the applicant, on the ground that, taking account of the new promotion points and those resulting from the pro rata temporis measure, he did not reach the reference threshold for inclusion on the list of officials eligible for promotion, fixed at 8 points, until 1 July 2015, which was after his transfer to the Parliament on 16 March 2015.

17 By decision of 11 May 2016, notified to the applicant on 20 May 2016, the appointing authority decided not to promote him in the 2015 procedure on the grounds set out in the opinion of the Committee on Promotions attached to the decision ('the contested decision').

18 On 13 July 2016, the Complaints Committee of the Court of Justice of the European Union furthermore decided that there was no need to adjudicate on the applicant's complaint of 10 February 2016, on the ground that it had become devoid of purpose following the award of promotion points to the applicant for 2014 and the contested decision, by which it once again refused to promote him despite the award of those points.

19 On 22 July 2016, the applicant lodged a complaint against the contested decision, which was rejected on 6 October 2016 ('the decision rejecting the complaint'). The decision rejecting the complaint was notified to the applicant on the same date.

20 By decision of the Parliament of 25 October 2016, the applicant was retroactively promoted to grade AD 10, step 1, with effect from 1 January 2016.

Procedure and forms of order sought

21 By application lodged at the Registry of the General Court on 13 January 2017, the applicant brought the present action.

22 On an application made by the applicant on the basis of Article 66 of the Rules of Procedure of the General Court, the Court omitted the applicant's name and other information concerning him from the public version of the present judgment.

23 Since the parties had not requested a hearing under Article 106(1) of the Rules of Procedure, the General Court (Ninth Chamber), considering that it had sufficient information available to it from the material in the file, decided to rule on the action without an oral part of the procedure, in accordance with Article 106(3) of the Rules of Procedure.

24 The applicant claims that the Court should:

– annul the contested decision and, so far as necessary, the decision rejecting his complaint;

– order the Court of Justice of the European Union to pay him compensation in respect of the material harm suffered;

– order the Court of Justice of the European Union to pay all the costs.

25 The Court of Justice of the European Union claims that the Court should:

– dismiss the action;

– order the applicant to pay all the costs.

Law

The claims for annulment

26 It should be borne in mind at the outset that, according to settled case-law, claims for annulment formally directed against a decision rejecting a complaint have the effect, where that decision lacks any independent content, of bringing before the Court the act against which the complaint was submitted (judgments of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraph 8, and of 6 April 2006, *Camós Grau* v *Commission*, T-309/03, EU:T:2006:110, paragraph 43). Given that, in the present case, the decision rejecting the complaint lacks any independent content, since it essentially merely confirms the contested decision, the action must be regarded as directed against the contested decision.

27 The applicant raises two pleas in law in support of his application for annulment. The first alleges infringement of Article 45 of the Staff Regulations, and the second infringement of the principles of equal treatment and of a single European civil service.

The plea alleging infringement of Article 45 of the Staff Regulations

28 The applicant claims that the contested decision infringed Article 45 of the Staff Regulations as interpreted by the case-law and implemented by the internal rules on promotion of the Court of Justice of the European Union.

29 The applicant contends that it is evident from that case-law and those internal rules that, where an official is eligible for promotion in the year during which he is transferred from one institution to another, the competent appointing authority is that of the institution of origin, and the promotion system to be applied is the one laid down by that institution, even if the official was transferred to another institution before the date when his possible promotion would have taken effect. It follows, in

the present case, that the applicant reached the promotion threshold on 1 July 2015 and should have been promoted from that date by the Court of Justice of the European Union, despite his transfer to the Parliament on 16 March 2015.

30 The applicant adds that taking into account the promotion points notionally accumulated after 16 March 2015 does not amount to a comparison of his merits with those of his new colleagues at the Parliament, which the Court of Justice of the European Union is not competent to do. The promotion system established in the Court of Justice of the European Union, based on the pro rata temporis measure, takes into account promotion points accumulated during the promotion year, which are granted solely on the basis of the promotion points already awarded during the year preceding the promotion year, when the applicant was an official of the Court of Justice of the European Union, so that his merits would have been compared with those of other officials of that same institution.

31 The Court of Justice of the European Union notes, first of all, that the applicant does not dispute the legality of the promotion system applied here in the light of Article 45 of the Staff Regulations. It also points out that the Staff Regulations do not confer an entitlement to promotion, even for officials satisfying all the conditions for being promoted. The Court of Justice of the European Union adds that requiring the appointing authority to award promotion points to a transferred official after the date of his transfer is tantamount to expecting it to continue to consider officials' comparative merits after the transfer date, which would not comply with its internal rules or the case-law. It states, in its rejoinder, that the pro rata temporis measure is a legal fiction by which merits accumulated solely in the course of a promotion exercise are converted into promotion points taken into account in the consideration of comparative merits conducted during that same procedure. Lastly, the Court of Justice of the European Union considers that the argument raised for the first time in the reply, that the applicant was not awarded any merit points for the period from 1 January to 16 March 2015, is inadmissible.

32 It should be noted, first of all, that the parties agree on the institution that is competent to decide on the applicant's promotion in the 2015 promotion exercise, which is, in the present case, the Court of Justice of the European Union, the applicant's institution of origin.

33 It is settled case-law that, in accordance with the requirements of Article 45 of the Staff Regulations, where an official is eligible for promotion in the year during which he is transferred from one institution to another, the appointing authority which is competent to decide on his promotion is that of his institution of origin (judgment of 28 June 2011, *Mora Carrasco and Others* v *Parliament*, F-128/10, EU:F:2011:96, paragraph 39; orders of 5 July 2011, *Alari* v *Parliament*, F-38/11, EU:F:2011:103, paragraph 31, and of 12 December 2013, *Debaty* v *Council*, F-47/13, EU:F:2013:215, paragraph 22).

34 The parties also agree on the fact that the promotion system to be applied by the Court of Justice of the European Union is its own promotion system, as established by a number of internal provisions referred to in paragraphs 2 to 8 above, the legality of which is, moreover, not disputed by the applicant.

35 It must be considered that it necessarily follows from the competence of the appointing authority of the institution of origin to decide on an official's promotion in the year during which he is transferred, and from the fact that that competence is based on the need to compare the merits of officials who are colleagues in the same institution at the time when that comparison is made (see, to that effect, judgment of 28 June 2011, *Mora Carrasco and Others* v *Parliament*, F-128/10, EU:F:2011:96, paragraph 35, and order of 5 July 2011, *Alari* v *Parliament*, F-38/11, EU:F:2011:103, paragraph 27) that the institution of origin in question must apply its own promotion system. It may also be observed that the application of the promotion system of the institution of origin was also agreed by the Board of Heads of Administration in its conclusions of 30 November 2011. It is clear from those conclusions, without there being any need to adjudicate here on whether they are binding,

which is disputed by the parties, that 'the date on which promotion takes effect is that resulting from the promotion system of the institution of origin', which means that the date must be determined in accordance with that system.

36 The parties differ, however, on how the promotion system of the Court of Justice of the European Union, and in particular the pro rata temporis measure, is to be applied in the present case.

37 It must be noted in that regard, first, that it is evident from the case-law on promotion in cases of interinstitutional transfer that the merits of the officials transferred must be compared with those of the officials who were still their colleagues during the year preceding their transfer. In order to decide whether an official should be promoted retroactively on 1 January of year N, the appointing authority can, in practice, only consider the comparative past merits of officials, in particular during year N-1, in the light of the reports appraising the performance of those officials in year N-1 and previously (judgment of 28 June 2011, *Mora Carrasco and Others* v *Parliament*, F-128/10, EU:F:2011:96, paragraph 35; orders of 5 July 2011, *Alari* v *Parliament*, F-38/11, EU:F:2011:103, paragraph 27, and of 12 December 2013, *Debaty* v *Council*, F-47/13, EU:F:2013:215, paragraph 23).

38 It is also evident from that case-law that promotion is decided retroactively, as taking effect on a date when the official concerned was attached to the institution which is competent to decide on his promotion. Since the award of promotion presupposes that an established post vacancy corresponding to the grade in question is available, and since each institution fixes its own number of posts independently, pursuant to Article 6 of the Staff Regulations, and, in parallel, its list of vacant posts (see, to that effect, judgment of 28 June 2011, *Mora Carrasco and Others* v *Parliament*, F-128/10, EU:F:2011:96, paragraph 37), the institution which is competent to decide on promotion may only promote the official concerned on a date on which it is in a position to appoint him to one of its vacant posts, in other words, in the period during which the official is attached to that institution.

39 Secondly, it should be noted that, contrary to the promotion systems at issue in the cases which gave rise to that case-law, the promotion system at the Court of Justice of the European Union provides, under the pro rata temporis measure, that promotion is possible not just on 1 January, but also on the first day of any of the following months in year N, and that, for the purposes of promotion during year N, the points taken into account are those awarded for year N-1 and those for year N.

40 It must be considered, however, that points awarded in year N, whether they relate to a consideration of comparative merits for year N, as the Court of Justice of the European Union maintains, or simply result from a notional extrapolation of the comparison of merits conducted for year N-1, as the applicant claims, can only be granted as long as the official concerned is attached to the institution competent to assess the comparative merits and, therefore, to decide on promotion. In so far as the award of those points, like the subsequent actions of the Joint Committee on Promotions and the appointing authority, forms part of the promotion exercise for year N (see, to that effect, judgment of 28 June 2016, *Kotula* v *Commission*, F-118/15, EU:F:2016:138, paragraph 55 and the case-law cited therein), for the purpose of determining the promotion date of the official concerned, those points can only be granted up to the date on which the institution remains competent to compare the applicant's merits with those of his colleagues in that institution and is capable of promoting him, in other words, in the present case, the date of the applicant's transfer to the Parliament.

41 In the present dispute, the Court of Justice of the European Union was therefore right to refuse to award the applicant points for the 2015 promotion exercise after the date of his transfer to the Parliament on 16 March 2015.

42 The Court of Justice of the European Union did not thereby infringe one of the objectives of the pro rata temporis measure, noted by the applicant, of improving equal treatment between officials by reducing the uncertainty surrounding the date when they attain the promotion threshold. The equal

treatment in question concerns officials reaching the promotion threshold on 1 January of the promotion year and those in the same institution reaching that threshold subsequently, not officials remaining in their institution and those transferred.

43 Furthermore, the application in the present case of the pro rata temporis measure by the Court of Justice of the European Union is supported by the order of 12 December 2013, *Debaty* v *Council* (F-47/13, EU:F:2013:215). Of course, as the applicant rightly states, the fact that he was transferred during the promotion exercise distinguishes his situation from that of the applicant in the case which gave rise to the order of 12 December 2013, *Debaty* v *Council* (F-47/13, EU:F:2013:215). In that case, the applicant had been transferred to another institution in 2011, before the start of 2012, the year in which he would have been eligible for promotion. However, contrary to the assertion of the applicant here, the considerations contained in that order are relevant in the present case, since the European Union Civil Service Tribunal considered, in essence, as does the Court of Justice of the European Union in the contested decision, that the date of transfer determined which institution was competent to decide on promotion, but also, and in parallel, the officials with which the official concerned by a promotion was to be compared and the date on which a promotion might take place, in other words a date on which the official was attached to the competent institution (order of 12 December 2013, *Debaty* v *Council*, F-47/13, EU:F:2013:215, paragraphs 23 and 24).

44 It follows from the foregoing that the first plea in law must be rejected, without there being any need to rule on the challenge of the Court of Justice of the European Union to the admissibility of the argument raised for the first time in the reply, that the applicant was not awarded any points for the period from 1 January to 16 March 2015. Since it is evident from the examination of the first plea in law that the Court of Justice of the European Union was not under any obligation to award the applicant points after 16 March 2015, the points awarded for the period from 1 January to 16 March 2015 would not have enabled him to reach the promotion threshold, so that that argument must, in any event, be rejected as irrelevant.

The plea in law alleging infringement of the principles of equal treatment and of a single European civil service

45 The applicant contends, first, that, in refusing to promote him, the Court of Justice of the European Union in actual fact suspended his involvement in the 2015 promotion exercise because of his transfer to the Parliament, thus undermining the principle of a single European civil service and his entitlement to reasonable career prospects. Secondly, he claims that the refusal to promote him also infringes the principle of equal treatment, since, simply by virtue of that transfer, he was treated differently from his colleagues, even though they were in an identical situation to his during the year preceding his transfer.

46 The Court of Justice of the European Union counters, first of all, that the principle of a single European civil service does not mean that the institutions must make identical use of their discretion, and that it cannot have the effect of obliging an institution to take decisions on promotion which infringe Article 45 of the Staff Regulations. Secondly, it notes that since the obligation to consider comparative merits laid down in Article 45 of the Staff Regulations is an expression of the principle of equal treatment, the rejection of the plea alleging infringement of Article 45 of the Staff Regulations should lead to the dismissal of the objection of infringement of the principle of equal treatment. It adds that, even though the applicant's situation, in 2014, was the same as that of his colleagues in the institution, it was fundamentally different in 2015 because of his transfer to the Parliament.

47 It should be noted, first of all, that according to settled case-law 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 9 October 2008, *Chetcuti* v *Commission*, C-16/07 P, EU:C:2008:549, paragraph 40, and of 9 February 1994, *Lacruz Bassols* v *Court of Justice*, T-109/92, EU:T:1994:16, paragraph 87).

48 It is also settled case-law that the consideration of comparative merits provided for in Article 45 of the Staff Regulations is an expression of the principle of equal treatment (see order of 8 October 2015, *Nieminen* v *Council*, T-464/14 P, EU:T:2015:787, paragraph 38 and the case-law cited therein).

49 In the present case, it must be considered that that principle has not been infringed, in the light of the difference, in 2015, between the applicant's situation and that of the other officials of the Court of Justice of the European Union whose comparative merits were under consideration prior to promotion. Unlike those other officials, the applicant was transferred to another institution during the promotion exercise concerned. The period taken into account by the Court of Justice of the European Union for the purposes of comparing the applicant's merits with those of his colleagues in the same institution, and for the purposes of awarding promotion points, was thus necessarily limited, in 2015, to 1 January to 15 March 2015. It is therefore irrelevant that, as the applicant maintains, he was in an identical situation to that of his colleagues who were also officials of the Court of Justice of the European Union in 2014, particularly as the applicant does not allege that he suffered discrimination in the award of promotion points for 2014. It may be added, in response to the claim of a risk of arbitrariness in the determination of the date of transfer by the institutions, and of a risk of misuse of powers, that that risk is wholly unsupported and that it is, in any event, largely limited by the pro rata temporis measure and by the fact that the transfer takes place on the official's initiative and that the two institutions concerned must agree on the transfer date determined.

50 That difference in treatment based on the interinstitutional transfer also does not result in any infringement of the principle of a single European civil service.

51 Secondly, it should be noted that it is settled case-law that, under the principle of a single administration, as laid down in Article 9(3) of the Treaty of Amsterdam, all the officials of all the institutions are subject to a single body of Staff Regulations and thus to the same provisions (see, to that effect, order of 11 October 2012, *Cervelli* v *Commission*, T-622/11 P, EU:T:2012:538, paragraph 25 and the case-law cited therein). However, in asserting, in the present case, that his interinstitutional transfer led to the suspension of his involvement in the 2015 promotion exercise contrary to that principle of a single administration, the applicant does not complain that the Court of Justice of the European Union applied different rules from those of the Parliament, or that those two institutions had adopted different internal rules on promotion. On the contrary, he complains that it did not apply its own rules in full and, in particular, he criticises the pro rata temporis measure, as if he had remained an official of that institution. In his arguments, therefore, the applicant does not criticise the Court of Justice of the European Union for failing to observe the principle of a single European civil service, so that the complaint of failure to observe that principle cannot succeed.

52 It may be added that the same would apply even if those arguments were to be interpreted as complaining that the Court of Justice of the European Union penalised him because of his transfer to the Parliament.

53 It is true that it is evident from the case-law that it is for the institutions to ensure, first, that mobility does not affect the career progress of the officials involved and, second, that transferred officials are not penalised in the promotion exercise (see, to that effect, judgments of 3 October 2000, *Cubero Vermurie* v *Commission*, T-187/98, EU:T:2000:225, paragraphs 68 and 69, and of 18 September 2013, *Scheidemann* v *Commission*, F-76/12, EU:F:2013:132, paragraph 29). Likewise, it may be noted that the applicant would have reached the promotion threshold on 1 July 2015, enabling him to be included on

the list of officials eligible for promotion, if he had remained an official of the Court of Justice of the European Union, and that he was not promoted to grade AD 10 by the Parliament until 1 January 2016.

54 However, first of all, the courts of the European Union have drawn attention in several of their judgments to the importance of the autonomy of each institution as an employer, rejecting arguments based on the unified character of the European Union civil service. It follows that an official transferred to an institution cannot claim that the same promotion rules as the more favourable rules applied by his institution of origin are applicable in order to argue that he was penalised in his promotion as a result of his mobility (see, to that effect, judgment of 5 July 2011, *V* v *Parliament*, F-46/09, EU:F:2011:101, paragraph 135 and the case-law cited therein).

55 Secondly, and in any event, it is evident from equally settled case-law that the Staff Regulations do not confer any right to promotion, even on officials who satisfy all the conditions for promotion, including the attainment of a promotion threshold (see judgment of 31 May 2005, *Dionyssopoulou* v *Council*, T-284/02, EU:T:2005:188, paragraph 19 and the case-law cited therein; see, to that effect, judgment of 14 July 2011, *Praskevicius* v *Parliament*, F-81/10, EU:F:2011:120, paragraph 51). The award of promotion points does not definitively lay down the institution's position at the conclusion of a promotion exercise, since the appointing authority still has its discretion and is not bound by the promotion points awarded by the directors or heads of department, or by the reference threshold, or by the Joint Committee on Promotions (see, with regard to the promotion system of the Court of Justice of the European Union, judgment of 11 December 2003, *Breton* v *Court of Justice*, T-323/02, EU:T:2003:340, paragraphs 48 and 50). It cannot, therefore, be inferred from the fact that the applicant would have reached the promotion threshold on 1 July 2015 by remaining an official of the Court of Justice of the European Union that he would necessarily have been entitled to promotion on that date. Hence it may also not be inferred that his promotion was delayed and, therefore, that the applicant was penalised as a result of his mobility. The second plea in law must therefore be rejected.

56 It follows that the claims for annulment must be dismissed.

The claim for compensation

57 The applicant seeks compensation for the material harm he claims to have suffered as a result of the unlawful acts relied on in the two pleas in law raised in support of his claims for annulment. He states that the material harm suffered is equivalent, primarily, to the difference between the remuneration he would have been paid between 1 July and 31 December 2015 had he been appointed to grade AD 10 on 1 July 2015 and the remuneration he actually received between 1 July 2015 and 1 January 2016, the date of his actual appointment to grade AD 10. He further claims that there is no doubt that it was the abovementioned unlawful conduct of the Court of Justice of the European Union which caused him that harm. The applicant adds, in his reply, that the retroactive dating of his promotion to 1 July 2015 should be taken into account for determining the date of his progression to step 2 of grade AD 10.

58 The Court of Justice of the European Union considers that the applicant's claim for compensation must be dismissed. First, the applicant does not define the scope of his claim, but merely describes the alleged consequences to be drawn from any annulling judgment. Secondly, claims for compensation for harm must be dismissed where, as here, they are closely linked to claims for annulment which must themselves be dismissed as unfounded. Thirdly, the alleged harm is not certain, since the payment of the remuneration referred to in the applicant's claim for compensation is, in actual fact, one of the consequences to be drawn by the Court of Justice of the European Union from any annulling judgment.

59 It must be noted that, in a claim for damages brought by an official or other staff member, for an institution to incur non-contractual liability for unlawful conduct, a series of conditions must be met, namely, the conduct of which the institution is accused must have been unlawful, the damage must be real and a causal connection must exist between that conduct and the damage in question. If one of those conditions is not met, the action must be dismissed in its entirety, without there being any need to consider the other conditions for incurring non-contractual liability (judgments of 1 June 1994, *Commission* v *Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 42, and of 17 May 2017, *PG* v *Frontex*, T-583/16, not published, EU:T:2017:344, paragraph 97).

60 It should be noted, as the Court of Justice of the European Union argues, that the claim for compensation is based solely on the acts that would be ruled unlawful should the two pleas in support of the claims for annulment be upheld. Since those pleas have been rejected, the condition that the conduct of which the institution is accused must have been unlawful is not met, so that the claim for compensation must be dismissed. It should in any case be dismissed as premature, even if the condition that the conduct must be unlawful were met here, since the annulment of the contested decision as a consequence of that unlawful conduct would not mean that the applicant had a right to be promoted (see, to that effect, order of 3 May 2017, *De Nicola* v *EIB*, T-71/16 P, not published, EU:T:2017:307, paragraph 24 and the case-law cited; see, also, paragraph 55 above).

61 It follows that the present action must be dismissed in its entirety.

Costs

62 Under Article 134(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Court of Justice of the European Union.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. Dismisses the action;

2. Orders RL to pay the costs.

Gervasoni Kowalik-Bańczyk Mac Eochaidh

Delivered in open court in Luxembourg on 14 December 2017.

[Signatures]