Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

19 June 2015 *

(Appeal — Civil service — Officials — Impartiality on the part of the Civil Service Tribunal — Application for the recusal of a judge — Reassignment — Interests of the service — Rule that the grade must correspond with the post — Article 7(1) of the Staff Regulations — Disciplinary proceedings — Rights of the defence)

In Case T-88/13 P,

APPEAL against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 5 December 2012 in *Z* v *Court of Justice* (F-88/09 and F-48/10, ECR-SC, EU:F:2012:171), seeking to have that judgment set aside,

Z, residing in Luxembourg (Luxembourg), represented by F. Rollinger, lawyer,

appellant,

the other party to the proceedings being

Court of Justice of the European Union, represented by A. Placco, acting as Agent,

the defendant at first instance,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, H. Kanninen (Rapporteur) and D. Gratsias, Judges,

Registrar: E. Coulon,

gives the following

Judgment [1]

1 By her appeal lodged pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant seeks to have set aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 5 December 2012 in *Z* v *Court of Justice* (F-88/09 and F-48/10, ECR-SC, 'the judgment under appeal', EU:F:2012:171), by which the Civil Service Tribunal dismissed her action seeking annulment of the decisions of the Court of Justice of the European Union, respectively, of 18 December 2008 reassigning the appellant and of 10 July 2009 imposing on her the penalty of a written warning.

* Language of the case: French.

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

Facts

2 The relevant facts giving rise to the dispute are set out in paragraphs 23 to 66 of the judgment under appeal as follows:

'23 The applicant was recruited as a probationary official with effect from 1 September 2005 and was assigned, from that date until 31 December 2008, to one of the translation units of the Directorate-General (DG) for Translation of the Court of Justice, as a lawyer-linguist. She was established as an official as of 1 June 2006.

24 In December 2005, Ms X was recruited as a lawyer-linguist in the same translation unit and within the same team as the applicant, as a member of the contract staff for auxiliary tasks. Ms X is the wife of Mr W, who was subsequently appointed to the position of Attaché to the Registrar of the Court of Justice.

25 The applicant was made responsible for revising some of the translations carried out by Ms X. In that capacity, she states that she quickly noted the poor quality of Ms X's translations, as well as Ms X's failure to follow instructions and meet deadlines.

26 The applicant claims that, on numerous occasions, she and some of her other colleagues, including her Team Leader, alerted the Head of Unit, Mr Y, to Ms X's alleged lack of competence. According to the applicant, the Head of Unit systematically ignored the criticisms of Ms X's work, which, in her view, was a result of his longstanding friendship with Ms X. Moreover, the applicant's professional standing within the unit deteriorated after she made her Head of Unit aware of the inadequacies of Ms X's work. For its part, the Court of Justice disputes that version of the facts, in particular the existence of any favourable treatment towards Ms X, and the failure to act by the applicant's hierarchical superiors.

27 In April 2006, an incident took place which strengthened the applicant's conviction that Ms X was enjoying preferential treatment within the unit. After the applicant had pointed out that one of Ms X's translations was incomplete and asked Ms X to complete it, Ms X sent the new document to the secretariat with the note "travail accompli" ["work completed"], whereas, according to the internal rules of the service, it should have been returned to the applicant for further revision. Afterwards, the applicant reported the incident to Mr Y, asking for firm measures to be adopted with regard to Ms X, which Mr Y refused to do.

28 The applicant lodged a complaint with the Director responsible for her unit concerning the attitude of her Head of Unit, which she considered to be "inappropriate and hostile".

29 According to the Court of Justice, at a meeting held on 10 December 2006, the Director explained to the applicant why Ms X had been recruited. The applicant claims that the Director also conceded at that meeting that Ms X had difficulties in relationships with other members of the unit and that, in the past, she had twice been unsuccessful in open competitions organised by the European Personnel Selection Office (EPSO) for positions as a lawyer-linguist at the Court of Justice. The Court of Justice disputes the truth of the comments which the applicant attributes to her former Director.

30 On 14 May 2007, the applicant found errors in the translation of a judgment of the Court of Justice translated by Ms X. She informed her Head of Unit, Mr Y, of those errors.

31 On 25 May 2007, in the context of the 2006 appraisal period, the applicant met the Director-General of DG Translation, in her capacity as appeal assessor. According to the applicant, she informed the Director-General of the difficulties she was facing as a result of the preferential treatment by the Head of Unit, Mr Y, for a member of his team, without, however,

referring to Ms X by name. According to the applicant, the Director-General was immediately shocked and proposed that an internal audit should be organised, in order to determine whether there had been preferential treatment in the appointment of the person at issue to the post of lawyer-linguist. According to the applicant, on learning that the person concerned was Ms X, the wife of the Attaché to the Registrar of the Court of Justice, the Director-General suggested that she change Directorate-General. The Court of Justice disputes the truth of the comments attributed by the applicant to the Director-General.

32 The applicant asserts that she alerted her hierarchical superiors to the preferential treatment of Ms X by her Head of Unit in an e-mail of 23 November 2007, in a note sent in connection with the 2007 appraisal period and, lastly, in an e-mail sent, inter alia, to the Registrar of the Court of Justice on 11 November 2008.

33 In the meantime, on 10 July 2008, the Head of Unit, Mr Y, decided to place the applicant in another team within the unit, because she had a confrontational relationship with her Team Leader. In the applicant's view, the truth of that reason should be doubted, since, first, that Team Leader was about to be transferred to the Council of the European Union and, secondly, he was unaware of the reasons why his relationship with her could be classified as confrontational until he himself consulted the Head of Unit. Nevertheless, the applicant did not submit a complaint against that decision to place her in a different team.

34 At the start of September 2008, the applicant used the services of one of the counsellors dealing with psychological harassment established by the [communication from the Registrar of the Court of Justice of 20 November 2006 on respect for human dignity].

35 In November 2008, it was proposed to the applicant that her work documents would be circulated electronically and no longer on paper.

36 On 9 December 2008, considering that she had been pushed to her limit by her Head of Unit's alleged psychological harassment, the applicant sent an e-mail to all the members of her unit, which, in the French version provided by the applicant, reads as follows:

"Chers collègues, moi non plus je ne serai pas des vôtres demain et il s'agit d'une décision bien réfléchie des choses, qui exige cependant quelques explications pour ceux qui ne sont pas au courant, de sorte que personne ne risque de se sentir vexé.

En effet, comme la majorité d'entre vous a pu s'[en] apercevoir, l'attitude du chef d'unité envers moi est devenue particulièrement hostile, et parfois tout à fait discourtoise, et je fais preuve de beaucoup de tact dans cette qualification (de son attitude), dès que j'ai attiré l'attention sur le fait que son incapacité à séparer les relations sociales et professionnelles a eu une influence très négative sur le fonctionnement de l'unité et les conditions de travail des réviseurs, qui ont été confrontés dans le cadre de leur travail à une connaissance de longue date du chef d'unité, qui a obtenu des contrats d'agent temporaire durant presque deux ans dans notre service.

Je ne suis pas la seule à avoir été gênée par cette situation mais apparemment j'ai été la seule à oser exprimer clairement ce que j'en pense, et notamment qu'il s'agissait d'une manifestation d'un manque de respect à l'égard des autres personnes travaillant dans notre unité parce qu'un traitement privilégié des connaissances s'est produit malheureusement aux dépens des autres, ceux qui sont arrivés ici à l'issue d'un concours EPSO ou sur la base de leur propre savoir et de leurs compétences, sans avoir de relations amicales, familiales et autres à la Cour.

Il va sans dire que la revanche a été et reste brutale, ce qui se répercute sur mes conditions de travail. J'estime néanmoins que des valeurs telles que l'honnêteté, la décence et la dignité sont bien plus importantes que, par exemple, un demi-point de promotion. Aucune position occupée n'autorise

quelqu'un à traiter les autres d'une manière incorrecte ou arrogante, surtout pour des raisons purement personnelles que chacun de vous, qui connaît la situation qui s'est produite dans notre unité de décembre 2005 à juin 2007 peut apprécier par lui-même.

À ceux qui m'ont répété que l'on ne peut rien faire face à des personnes unies par des relations et que rien ne changera ici, la bonne nouvelle c'est que, au contraire, beaucoup a déjà changé et changera encore plus bientôt. La meilleure preuve en est qu'à présent sont recrutés dans notre unité des lauréats de concours EPSO ou ceux qui ne soulèvent pas le moindre doute quant au fait qu'ils sont engagés sur la base de leur valeur intrinsèque et non par exemple en fonction de qui ils connaissent et depuis combien de temps.

À ceux à qui rien ne peut couper l'appétit, je souhaite 'bon appétit !'

…

P.S. Je remercie beaucoup tous ceux parmi vous qui ont voté pour moi aux élections au [comité du personnel] (presque 350 voix, c'est un très bon résultat) et pour les courriels et les autres expressions de soutien que j'ai reçues. C'est quand même une expérience constructive qu'un groupe de personnes si nombreux considère également que beaucoup de choses devraient changer non seulement dans notre unité, mais aussi dans l'[i]nstitution. À présent, les chances d'y arriver sont nettement meilleures qu'auparavant."

[Dear colleagues, I too will not be with you tomorrow, and this is a carefully considered decision, which requires, however, some explanation for those who are not aware of the situation, so that there is no risk of upsetting anyone.

As most of you will have noticed, the Head of Unit's attitude towards me has become particularly hostile, and sometimes downright disrespectful, and I'm being very tactful in that description (of his attitude), since I drew attention to the fact that his inability to separate social and work relationships has had a very negative influence on the operation of the unit and the working conditions for revisers, who in their work have had to deal with a long-standing acquaintance of the Head of Unit who has been given temporary agent contracts for nearly two years in our service.

I am not the only person to have been disturbed by this situation but apparently I was the only one who dared clearly to say what I thought about it and, in particular, that it indicated a lack of respect for the other people working in our unit, because the preferential treatment for acquaintances unfortunately occurred at the expense of other people: those who came here following an EPSO open competition or on the basis of their own knowledge and abilities, and had no friendship, family or other ties with the Court of Justice.

It goes without saying that the retaliation has been and continues to be brutal, which has repercussions on my working conditions. It is still my view that values such as honesty, decency and dignity are far more important than, for example, half a promotion point. Whatever a person's position, he cannot be allowed to treat others improperly or arrogantly, particularly for purely personal reasons which all of you who are aware of the situation which prevailed in our unit between December 2005 and June 2007 can appreciate for yourselves.

To the people who have repeatedly told me that nothing can be done when confronted with people in close relationships and that nothing will change here, the good news is that, on the contrary, much has already changed and yet more change will soon take place. The best evidence of this is that we are currently recruiting into our unit individuals who were successful in the EPSO competition or individuals who were, without a shadow of a doubt, employed on the basis of their intrinsic worth and not, for example, because of who they know and for how long.

To those who have a strong stomach, I wish you "bon appétit!"

…

P.S. Many thanks to all those who voted for me in the elections [for the staff committee] (nearly 350 votes, that is a great result) and for the e-mails and other messages of support I have received. Despite everything, it has been a positive experience that such a large group of people also believe that much needs to change, not only in our unit, but also in the [i]nstitution. The chances of achieving that change are now clearly greater than they were.]

37 By e-mail of the same day sent to the newly-appointed Director of her unit, copied to the Director-General of DG Translation, the applicant requested a meeting regarding the psychological harassment which she claimed to have suffered.

38 On 10 December 2008, the applicant sent another e-mail … to her Head of Unit, Mr Y, and to all the members of the unit, which reads as follows in the French translation provided by the applicant:

"Bonjour

Vos supérieurs sont parfaitement au courant de l'affaire depuis longtemps et [le directeur général] était d'avis que la question des contrats attribués à l'une de vos connaissances devrait faire l'objet d'un audit interne de la Cour. Actuellement, des clarifications sont en cours pour voir pourquoi l'audit n'a pas été fait en temps utile et qui est responsable de cette négligence.

M'adresser des menaces ne change pas les faits et [le directeur nouvellement en charge de l'unité] a déjà décidé antérieurement de consacrer tout le temps nécessaire à un entretien concernant votre comportement inconvenant dans le cadre de l'accomplissement de vos fonctions, parce que l'ancien directeur […] a ignoré ce problème pendant très longtemps et il semble que cela va désormais changer."

[Good morning

Your superiors have been fully aware of the matter for a long time and [the Director-General] was of the opinion that the question of the contracts awarded to one of your acquaintances should be the subject of an internal audit by the Court of Justice. Clarifications are currently being sought as to why the audit was not carried out in good time, and to establish who is responsible for that negligent act.

Threatening me does not change the facts and [the newly-appointed director responsible for the unit] has already decided to devote as much time as necessary to a meeting concerning your improper conduct in the performance of your duties, because the former director … ignored this problem for a very long time and it seems that this is now going to change.]

1. The reassignment decision of 18 December 2008

39 The two e-mails sent on 9 and 10 December by the applicant to all the members of the unit to which she was assigned led, first, to the adoption by the Registrar of the Court of Justice, acting as appointing authority ("the appointing authority"), of the decision of 18 December 2008, by which he transferred the applicant with her post, the applicant being, on the basis of Article 7(1) of the Staff Regulations [of Officials of the European Communities], transferred to work at the Library Directorate with effect from 1 January 2009 … In the memorandum of notification of the decision, the Director-General for Personnel and Finance of the Court of Justice states that that decision "is motivated by the need to ensure the proper functioning of [your] unit …, which has

been compromised following e-mails in which serious accusations were made against your hierarchical superiors, which you sent to all your colleagues in the unit on 9 and 10 December 2008".

40 On 2 April 2009, the applicant submitted a complaint, under Article 90(2) of the Staff Regulations [of Officials of the European Communities], by which she sought annulment of the decision of 18 December 2008 and compensation for non-material damage, assessed at EUR 30 000. …

42 By decision of 30 June 2009, notified on 13 July 2009, the Complaints Committee rejected the complaint of 2 April 2009.

2. The decision relating to the disciplinary measure of 10 July 2009

43 The second consequence of the e-mails of 9 and 10 December 2008 was that a note was sent, on 19 December 2008, to the Registrar of the Court of Justice, in his capacity as the appointing authority, by DG Translation, in which the latter asked for disciplinary proceedings to be instituted against the applicant ("the note for the file") …

44 By memorandum of 12 January 2009, the Registrar of the Court of Justice sent to the applicant the note for the file, to which was attached a translation into French of the two e-mails of 9 and 10 December 2008, and invited her to a hearing pursuant to Article 3 of Annex IX to the Staff Regulations [of Officials of the European Communities]. That hearing took place on 28 January 2009, in the presence of the Director of the Directorate for Human Resources and Personnel Administration of the DG Personnel and Finance of the Court of Justice, who was instructed to draw up the minutes. At that hearing, the applicant requested and was granted leave to submit any written observations additional to the initial observations which she might find necessary to submit following the drafting of the minutes.

45 On 3 February 2009 the applicant received the draft minutes of the hearing of 28 January 2009 and, on 9 February 2009, she sent her initial observations on that draft to the appointing authority.

46 On 27 February 2009, the applicant sent additional observations, in which she argued that the procedure initiated against her was unlawful.

47 On 12 March 2009, the applicant received, for signature, the final version of the minutes of the hearing. She returned the document unsigned, arguing that it did not reflect all the observations she had made.

48 By memorandum of 1 April 2009, the Registrar of the Court of Justice informed the applicant that, given that it was wrong to send the e-mails of 9 and 10 December 2008, he had decided to institute the disciplinary proceedings laid down in Article 11 of Annex IX to the Staff Regulations [of Officials of the European Communities], "in order to impose the penalty of a written warning or a reprimand without consulting the Disciplinary Board". Furthermore, he stated that before taking a view on how to classify the conduct of the applicant and on any penalty to be imposed, a second hearing would be organised under Article 11 of the Staff Regulations.

49 The applicant was heard for a second time by the Registrar of the Court of Justice on 8 May 2009 … …

54 [O]n 10 July 2009, the Registrar of the Court of Justice, in his capacity as the appointing authority, took the decision to impose on the applicant the penalty of a written warning, on the ground that "sending, to all the members of [her unit], the e-mails of 9 and 10 December 2008 reflected adversely on her position, contrary to Article 12 of the Staff Regulations [of Officials of the European Communities]" ("the penalty of 10 July 2009"). …

59 By letter of 10 November 2009, the applicant lodged a complaint, under Article 90(2) of the Staff Regulations [of Officials of the European Communities], against the penalty of 10 July 2009 … …

61 By letter of 22 January 2010 … the applicant was invited to a hearing before the Complaints Committee, set for 9 February 2010. …

65 By letter of 19 February 2010 sent to the [Complaints Committee], the applicant [stated] that, in her view, the Complaints Committee was not competent to decide on her complaint.

66 By decision of 10 March 2010, notified on 15 March 2010, the Complaints Committee rejected the complaint against the penalty of 10 July 2009.'

Procedure at first instance …

5 By application lodged at the Registry of the Civil Service Tribunal on 22 June 2010, the appellant brought an action that was registered as Case F-48/10 ('the action in Case F-48/10'), seeking, first, annulment of the decision of the appointing authority of 10 July 2009 imposing on her the penalty of a written warning ('the penalty of 10 July 2009') and, in so far as is necessary, of the decision rejecting the complaint made against that penalty and, secondly, an order that the Court of Justice pay her a sum of EUR 50 000 by way of compensation for non-material damage incurred.

6 In its defence, the Court of Justice contended, in particular, that the action in Case F-48/10 should be dismissed.

…

11 At the opening of the hearing of 25 January 2012, the appellant lodged an express application for the recusal of the Judge-Rapporteur, who, subsequent to the letter cited in paragraph 7 above, had become the President of the Civil Service Tribunal and President of the Third Chamber, the formation to which the cases at issue were assigned, because of a perceived lack of integrity, impartiality and independence. In that application, it was stated, in the claims relating to the partiality of the Judge-Rapporteur based on the fact that he had, in his capacity as President of the Civil Service Tribunal, retained the Complaints Committee of the Civil Service Tribunal, that the same 'also applied to the members [of that Tribunal] who [had] agreed to become members of that committee, as their impartiality in that regard was objectively compromised'.

12 Following the application for recusal lodged by the appellant at the start of the hearing, the Tribunal stayed the proceedings.

13 By letter of 6 February 2012, the Registrar of the Civil Service Tribunal sent the application for recusal, asking for comments, to the Court of Justice, which, by letter received at the Registry of the Civil Service Tribunal on 17 February 2012, stated that it had no comments to make and left the matter to the discretion of that Tribunal. By reasoned decision of 29 March 2012, the President of the Second Chamber of the Civil Service Tribunal rejected the application for the recusal of both the Judge-Rapporteur and the two judges sitting on the Complaints Committee of the Civil Service Tribunal.

14 By letter from the Registry of 4 April 2012, the parties were invited to a new hearing which was held on 10 May 2012.

15 On 5 December 2012, the Civil Service Tribunal (Third Chamber) delivered the judgment under appeal.

…

Judgment under appeal …

The action in Case F-48/10

28 In support of her claims for annulment, the appellant relied on six pleas in law, alleging, first, lack of competence on the part of the Complaints Committee and illegality of Article 4 of the decision of the Court of Justice of the European Union of 4 May 2004 concerning the exercise of the powers conferred by the Staff Regulations of Officials of the European Union on the appointing authority and by the Conditions of Employment of Other Servants of the European Union on the authority empowered to conclude contracts of employment ('the Decision of 4 May 2004'); secondly, the irregularity of the disciplinary proceedings on grounds of infringement of the rights of the defence and of the rule that parties should be heard, and of Articles 1 to 3 of Annex IX to the Staff Regulations; thirdly, infringement of Article 12 of the Staff Regulations and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as a manifest error of assessment; fourthly, the existence of a conflict of interests on the part of the appointing authority, infringement of Articles 2 and 10 of the Statute of the Court of Justice, Article 11a of the Staff Regulations, Article 8 of the European Code of Good Administrative Behaviour, Article 41 of the Charter of Fundamental Rights, and the general principles of objectivity, impartiality and independence; fifthly, infringement of the rights of the defence and the principle of equality of arms and; sixthly, the existence of an abuse and misuse of powers, and infringement of the principles of care and of sound administration.

29 By the judgment under appeal, the Civil Service Tribunal dismissed all of those pleas.

…

Procedure before the General Court and forms of order sought

32 By document lodged at the Registry of the General Court on 14 February 2013, the appellant brought the present appeal.

33 By letter lodged at the Registry of the General Court on 26 February 2013, the appellant submitted an application for anonymity, which was granted by the President of the Appeal Chamber by decision of 6 March 2013.

34 On 19 September 2013, the Court of Justice submitted its reply. The written procedure was closed on 2 December 2013.

35 Acting on a report from the Judge-Rapporteur, the General Court (Appeal Chamber) noted that no application for a hearing to be arranged had been submitted by the parties within the period of one month from notification of the closure of the written procedure and decided to give a ruling without an oral procedure, pursuant to Article 146 of its Rules of Procedure.

36 The appellant claims that the General Court should:

— set aside the judgment under appeal;

— grant the forms of order she sought at first instance in Cases F-88/09 and F-48/10;

— order the Court of Justice to pay the costs incurred at first instance and in the context of the present appeal.

37 The Court of Justice contends that the General Court should:

— dismiss the appeal;

— order the appellant to pay the costs.

The appeal

38 In support of the appeal, the appellant relies on eleven grounds of appeal. The first ground of appeal alleges lack of impartiality on the part of the Third Chamber of the Civil Service Tribunal. The second ground of appeal alleges infringement of the right to an effective remedy in so far as the Civil Service Tribunal's review concerning compliance with the condition relating to the interest of the service, laid down in Article 7(1) of the Staff Regulations, is limited. The third ground of appeal alleges lack of competence on the part of the President of the Second Chamber of the Civil Service Tribunal to rule on the application for recusal of 25 January 2012. The fourth ground of appeal alleges infringement of the right to a fair hearing in so far as the Rules of Procedure of the Civil Service Tribunal do not provide for the possibility of bringing an action against the decision to dismiss the application for the recusal of a judge. The fifth ground of appeal alleges, first, infringement of the obligation to establish the substantive truth of the reasons which gave rise to the reassignment decision and to the penalty of 10 July 2009 and, secondly, a distortion of the facts. The sixth ground of appeal alleges an error of law in so far as the Civil Service Tribunal wrongly held that the reassignment decision had been adopted solely in the interest of the service within the meaning of Article 7(1) of the Staff Regulations. The seventh ground of appeal alleges an error of law by the Civil Service Tribunal in so far as it ruled, wrongly, that the appointing authority had complied with the rule requiring correspondence between grade and post. The eighth ground of appeal alleges infringement of the rights of the defence and of the right to a fair hearing. The ninth ground of appeal alleges an error of law in so far as the Civil Service Tribunal wrongly ruled that the claim for compensation in respect of the damage allegedly suffered as a result of all staff members being sent the reassignment decision was inadmissible. The tenth ground of appeal alleges, first, an error of law in that the Civil Service Tribunal ruled that the Complaints Committee, which rejected the complaint against the penalty of 10 July 2009, was competent and, secondly, a failure to rule on the plea alleging illegality of Article 4 of the Decision of 4 May 2004. The eleventh ground of appeal alleges, first, an error of law in that the Civil Service Tribunal ruled, wrongly, that the appointing authority had complied with Articles 1 to 3 of Annex IX to the Staff Regulations and, secondly, infringement of the rights of the defence and of the rule that the parties should be heard.

…

The grounds of appeal relating to the action in Case F-48/10

The tenth ground of appeal, alleging, first, an error of law in that the Civil Service Tribunal ruled that the Complaints Committee, which rejected the complaint against the penalty of 10 July 2009, was competent and, secondly, a failure to rule on the plea alleging illegality of Article 4 of the Decision of 4 May 2004

138 The appellant criticises paragraphs 226 to 228 of the judgment under appeal, in which the Civil Service Tribunal rejected as ineffective the plea alleging lack of competence on the part of the Complaints Committee, on the ground that, since the decision to reject the complaint against the penalty of 10 July 2009 was a confirmatory act devoid of any independent content, its annulment was not capable of having an influence on the lawfulness of the penalty of 10 July 2009. In the appellant's view, that reasoning of the Civil Service Tribunal cannot be based on the existence of a decision rejecting the complaint adopted by an incompetent body.

139 The Court of Justice disputes the appellant's arguments.

140 At first instance, the appellant sought the annulment of the penalty of 10 July 2009 and, in so far as is necessary, the annulment of the decision rejecting the complaint against the penalty of 10 July 2009 (judgment under appeal, paragraph 69).

141 According to settled case-law, every decision which is a straightforward rejection of a complaint, whether it be express or implied, only confirms the act or failure to act to which the complainant takes exception and is not, by itself, a decision which may be challenged, and accordingly the conclusions directed against that decision without content independent from the initial decision must be regarded as being directed against the initial act (order of 16 June 1988 in *Progoulis* v *Commission*, 371/87, ECR, EU:C:1988:317, paragraph 17, and judgment of 2 March 2004 in *Di Marzio* v *Commission*, T-14/03, ECR-SC, EU:T:2004:59, paragraph 54). A decision rejecting the complaint is a confirmatory act, devoid of any independent content, where it does not contain a re-examination of the complainant's situation in the light of new elements of law or of fact (judgments of 21 September 2011 in *Adjemian and Others* v *Commission*, T-325/09 P, ECR, EU:T:2011:506, paragraph 32, and 21 May 2014 in *Mocová* v *Commission*, T-347/12 P, ECR (Extracts), EU:T:2014:268, paragraph 34).

142 On the basis of the case-law cited in paragraph 141 above, the Civil Service Tribunal found, in paragraph 227 of the judgment under appeal, that the administration had not re-examined the appellant's situation in the light of new elements of law or of fact, so that the decision rejecting the complaint was to be regarded as purely confirmatory of the penalty of 10 July 2009. The Civil Service Tribunal concluded from this that annulment of the decision rejecting the complaint was not capable of having an impact on the legality of the penalty of 10 July 2009, with the result that the plea alleging lack of competence on the part of the Complaints Committee, which seeks annulment of the decision rejecting the complaint, should be rejected as ineffective.

143 It should be pointed out, however, that, by the plea alleging lack of competence on the part of the Complaints Committee, relied on by the appellant at first instance, the latter challenged the composition of that committee which had rejected her complaint against the penalty of 10 July 2009. That plea was therefore concerned with the issue of whether the appellant's complaint had been examined in the context of a lawful procedure which could have resulted in a decision different from that of the penalty of 10 July 2009. Therefore, the appellant had a real and separate interest in seeking the annulment of the decision rejecting the complaint and not only the annulment of the penalty of 10 July 2009.

144 If the case-law in paragraph 141 above is applied irrespective of whether the ground of appeal at issue relates to the administrative complaint procedure itself and not to the initial act which was the subject of the complaint, any possibility of a challenge concerning the pre-litigation procedure would be excluded, thus depriving the complainant of the benefit of a procedure which seeks to permit and encourage an amicable settlement to the dispute which has arisen between the official and the administration and to require the authority to which the official reports to reconsider its decision, in compliance with the rules, in the light of any objections which that official may make (see, to that effect, judgment in *Mocová* v *Commission*, cited in paragraph 141 above, EU:T:2014:268, paragraph 38).

145 In that regard, it is necessary to regard as unfounded the argument of the Court of Justice that the appellant has no interest in seeking the annulment of the decision rejecting the complaint after bringing an application for annulment of the initial act since, even if the complaint procedure was irregular, it would not be necessary for the administration to take a new decision on the complaint in so far as the appellant has requested that the court itself annul the initial act. Contrary to the submissions of the Court of Justice, the complainant's interest in the proper conduct of the complaint procedure and, therefore, in the annulment of the decision relating to the rejection of her complaint in the event of irregularity, must be assessed independently and not in relation to any action brought against the initial act, which is the subject of the complaint. Otherwise, the person concerned could never rely on irregularities in the complaint procedure, even though they deprived him of the benefit of a proper pre-litigation review of the administration's decision, whenever an appeal is brought against the initial act against which the complaint was made.

146 It follows that, having regard to the purpose of the ground of appeal at issue, which relates to the complaint procedure, the appellant must be able to request a review by the European Union Courts of the legality of the decision rejecting the complaint and not only the legality of the penalty of 10 July 2009.

147 It is therefore necessary to consider that the Civil Service Tribunal erred in law in rejecting as ineffective the plea alleging lack of competence on the part of the Complaints Committee.

148 Consequently, the tenth ground of appeal must be upheld.

…

162 As a result of all of the foregoing, it is necessary to uphold the appeal in part and annul the judgment under appeal in so far as it is vitiated by the error of law established in paragraphs 140 to 147 above.

The action brought at first instance

163 In accordance with Article 13(1) of Annex I to the Statute of the Court of Justice, if the appeal is well founded, the General Court is to quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It is, however, required to refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the General Court.

164 In the present case, the General Court has available to it the information necessary to rule on the action at first instance.

165 In the light of the fact that the appeal has been upheld only in part and that the judgment under appeal is set aside only in so far as it is vitiated by the error of law identified in paragraphs 140 to 147 above, it must be found that the other assessments by the Civil Service Tribunal, which are not vitiated

by that error, have become final. It is therefore for the General Court to examine only the plea relied on by the appellant in Case F-48/10 alleging lack of competence on the part of the Complaints Committee and illegality of Article 4 of the Decision of 4 May 2004.

166 The appellant argued before the Civil Service Tribunal that the Complaints Committee, responsible for examining her complaint against the penalty of 10 July 2009 and composed of a judge from the Court of Justice and two Advocates General, was not properly constituted. In that regard, she submitted, first, that Article 4 of the Statute of the Court of Justice provides that '[t]he Judges may not hold any political or administrative office'. Secondly, she relied on Article 12 of the Statute of the Court of Justice, which states that officials and other servants attached to the Court of Justice 'shall be responsible to the Registrar under the authority of the President', with the result that only the Registrar and the President of the Court of Justice can act as the appointing authority. Thirdly, the appellant claimed that Article 4 of the decision of 4 May 2004, which provides that 'the Complaints Committee shall exercise the powers conferred by the Staff Regulations on the appointing authority' as regards decisions on complaints, was contrary to Article 2(1) of the Staff Regulations which provides that each institution is to determine who within it is to exercise the powers conferred by those Staff Regulations on the appointing authority, read in conjunction with Articles 4 and 12 of the Statute of the Court of Justice. Furthermore, she submitted that the Statute of the Court of Justice does not permit the Registrar or the President of the Court of Justice to delegate the powers of the appointing authority which are conferred on them.

167 It should first be noted that the appellant merely recalls the content of the first paragraph of Article 4 of the Statute of the Court, according to which '[t]he Judges may not hold any political or administrative office' and asserts that, with the exception of the President of the Court of Justice, the other judges and the Advocates General cannot exercise any administrative function and, in particular, act as the appointing authority in the context of a Complaints Committee. There is no legal argument to substantiate that assertion. As the Court of Justice argued before the Civil Service Tribunal, that provision seeks to ensure the independence of the judges, both during and after the exercise of their functions, with regard, in particular, to Member States or other EU institutions. The other paragraphs of Article 4 of the Statute of the Court of Justice also reflect that aim of preserving the judges' independence. The appellant cannot, however, infer from the first paragraph of Article 4 of the Statute of the Court of Justice that it is impossible to exercise functions relating to the internal administration of the institution. As the Court of Justice rightly pointed out in its written pleadings before the Civil Service Tribunal, the exercise by the judges of internal administrative functions within the institution does not undermine their independence and makes it possible to ensure the administrative autonomy of the institution.

168 Furthermore, the appellant merely asserts that, in the light of Article 12 of the Statute of the Court of Justice, which provides that officials and servants attached to the Court of Justice 'shall be responsible to the Registrar under the authority of the President', only the Registrar and the President of the Court of Justice may exercise the powers conferred by the Staff Regulations on the appointing authority. She does not demonstrate that her interpretation of Article 12 of the Statute of the Court of Justice, which allows only the Registrar and the President of the Court of Justice to exercise the powers conferred on the appointing authority, is compatible with Article 2(1) of the Staff Regulations, which provides that each institution is to determine who within it is to exercise the powers conferred by those Staff Regulations on the appointing authority. The appellant merely states that Article 2(1) of the Staff Regulations may, as regards the Court of Justice, only be read in conjunction with Articles 4 and 12 of the Statute of the Court of Justice.

169 In those circumstances, the appellant cannot validly maintain, without any other support, that Article 4 of the decision of 4 May 2004, under which the Complaints Committee exercises the powers conferred by the Staff Regulations on the appointing authority as regards decisions on complaints, is contrary to Article 2(1) of the Staff Regulations, read in combination with Articles 4 and 12 of the Statute of the Court of Justice.

170 It follows that the plea at first instance alleging lack of competence on the part of the Complaints Committee and illegality of Article 4 of the decision of 4 May 2004, relied on by the appellant in Case F-48/10, must be rejected. Therefore, the action in Case F-48/10 must be dismissed in that regard.

…

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby:

1. **Sets aside the judgment of the European Union Civil Service Tribunal (Third Chamber) in *Z* v *Court of Justice* (F-88/09 and F-48/10, ECR-SC, EU:F:2012:171), in so far as it rejected as ineffective the plea in law, raised in Case F-48/10, alleging lack of competence on the part of the Complaints Committee and illegality of Article 4 of the decision of the Court of Justice of the European Union of 4 May 2004 concerning the exercise of the powers conferred by the Staff Regulations of Officials of the European Union on the appointing authority and by the Conditions of Employment of Other Servants of the European Union on the authority empowered to conclude contracts of employment;**

2. **Dismisses the appeal as to the remainder;**

3. **Dismisses the action in Case F-48/10 in so far as it was based on the plea in law alleging lack of competence on the part of the Complaints Committee and illegality of Article 4 of the decision of the Court of Justice of 4 May 2004 concerning the exercise of the powers conferred by the Staff Regulations of Officials of the European Union on the appointing authority and by the Conditions of Employment of Other Servants of the European Union on the authority empowered to conclude contracts of employment;**

4. **As regards the costs incurred in the present appeal proceedings, declares that Z is to bear three quarters of her own costs and orders her to pay three quarters of the costs incurred by the Court of Justice, and declares that the Court of Justice is to bear one quarter of its own costs and orders it to pay one quarter of the costs incurred by Z.**

Jaeger Kanninen Gratsias

Delivered in open court in Luxembourg on 19 June 2015.

[Signatures]