Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

7 March 2019*

(Civil service — Accredited parliamentary assistant — Termination of the contract — Breakdown in the relationship of trust — Outside activity — Manifest error of assessment — Claim for damages)

In Case T-59/17,

L, represented by I. Coutant Peyre, lawyer,

applicant,

v

European Parliament, represented by Í. Ní Riagáin Düro and M. Windisch, acting as Agents,

defendant,

concerning, first, an application on the basis of Article 270 TFEU seeking annulment of the Parliament's decision of 24 June 2016 terminating the applicant's contract of employment as an accredited parliamentary assistant and, secondly, an application for damages for the non-material damage allegedly suffered by the applicant,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, L. Madise (Rapporteur) and R. da Silva Passos, Judges,

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

1 On 22 May 2014, the applicant, L, was recruited by the European Parliament on request from a Member of the Parliament ('the MEP'). He was employed as an accredited parliamentary assistant ('APA') to that MEP, under a contract covering the years 2014 to 2019.

2 On 25 February 2016, the MEP submitted to the Parliament's authority empowered to conclude contracts of employment ('the AECE') a written request to terminate the applicant's APA contract.

* Language of the case: English.

3 On 21 April 2016, at the invitation of the AECE, the applicant attended a meeting during which the AECE informed him of the reason given by the MEP in the request for termination of his contract as an APA.

4 On 9 May 2016, the applicant sent a note to the AECE ('the note of 9 May 2016') in order to submit his observations on the request to terminate his APA contract.

5 On 25 May 2016, according to the application, or on 26 May 2016 according to the defence, the applicant was invited to a second interview with the AECE concerning the note of 9 May 2016.

6 On 31 May 2016, a conciliation procedure took place, as provided for in Article 139(3a) of the Conditions of Employment of Other Servants of the European Union ('the CEOS').

7 By letter of 15 June 2016, the Conciliator of the Parliament found that it was not possible for the parties to continue to work together and terminated the conciliation procedure.

8 On 24 June 2016, the Parliament notified the applicant of the decision terminating his APA contract ('the contract termination decision'). In that decision, the AECE stated that '[as] trust [was] the basis of the relationship between the [MEP] and [his APA], [it had] decided to terminate [his] contract in conformity with Article 139(1)(d) of the CEOS on the grounds that this trust [was] broken due to [his] failure to observe the rules regarding permission to engage in outside activities'.

9 On 19 September 2016, the applicant lodged a complaint pursuant to Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable to other servants by virtue of the reference to Title VII of the Staff Regulations in Article 117 of the CEOS, in order to contest the contract termination decision.

10 By letter of 24 January 2017, the Secretary-General of the Parliament rejected the complaint. He observed that it was clear from the applicant's file that, during his APA contract, he had performed an outside activity consisting of exercising a legal profession without lodging a prior request for authorisation, in breach of Article 12b of the Staff Regulations according to which '... an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Union, shall first obtain the permission of the Appointing Authority ...'. He observed, in that regard, that that requirement was undoubtedly known to the applicant, in consideration of both his education as a lawyer and his previous employment by the Parliament between 2005 and 2007, when the applicant was confronted with the same issue. He also stated that, in his correspondence with the Parliament's services, the applicant had repeatedly acknowledged that, during that contract he was actually engaged in other activities, unrelated to his contractual duties.

Procedure and forms of order sought

11 By letter lodged at the Court Registry on 24 January 2017, the applicant applied for legal aid. That application was registered as Case T-59/17 AJ.

12 The applicant brought the present action by document lodged at the Court Registry on14 April 2017.

13 By order of the President of the General Court of 5 September 2017, the application for legal aid was dismissed.

14 On an application made by the applicant on the basis of Article 66 of the Rules of Procedure, the Court omitted the applicant's name in the public version of the present judgment.

15 As the parties did not request a hearing pursuant to Article 106(1) of the Rules of Procedure, the General Court (Ninth Chamber) considered that it had sufficient material available to it from the case file and decided, in accordance with Article 106(3) of the Rules of Procedure, to give judgment in the case without holding an oral hearing.

16 The applicant claims that the Court should:

– Annul the contract termination decision;

– Order the Parliament to pay 'non-pecuniary' damages of EUR 100 000;

– Order the Parliament to pay the costs.

17 The Parliament contends that the Court should:

– Dismiss the action as inadmissible in part and, in any event, unfounded;

– Order the applicant to pay the costs in their entirety.

Law

The claim for annulment

18 In the application, the applicant raises eight pleas in law, alleging (i) infringement of Article 22b(1) of the Staff Regulations on the protection of whistle-blowers, (ii) failure to state reasons, (iii) manifest error of assessment, (iv) breach of the principle of proportionality, (v) breach of the duty of care, (vi) failure to reply to the applicant's request for assistance, breach of his rights of defence and of the 'right to conciliation', (vii) lack of access to documents and (viii) misuse of powers.

19 At the stage of the reply, the applicant raised a ninth plea in law, alleging abusive dismissal.

20 It is appropriate to begin by considering the third plea, alleging a manifest error of assessment.

The third plea, alleging a manifest error of assessment.

21 The applicant claims, in essence, that the Parliament committed a manifest error of assessment in considering that the relationship of trust could have been broken by the failure to make a declaration, within the meaning of Article 12b(1) of the Staff Regulations, in respect of alleged 'outside activities' carried out by him.

22 The applicant states in that regard that the MEP was aware of the activities in question, which were carried out on his instructions on his behalf and were fraudulent in nature. Therefore, in his view, the Parliament was manifestly wrong to consider that the exercise of those activities was likely to lead to a loss of trust on the part of that MEP.

23 The applicant adds that the Parliament's reading of the note of 9 May 2016 is incomplete. According to the applicant, the Parliament considers that he 'acknowledged' the existence of outside activities while obscuring the context of those 'activities', namely the fact that those activities were the subject of a complaint to the [*confidential*[1]] prosecution service and the European Anti-Fraud Office (OLAF)

1 Confidential data omitted.

and had been undertaken on the instructions of the MEP, who was therefore aware of those activities. He claims that such activities, taking into account the context in which they took place, could not be the basis of the loss of trust referred to by that MEP in the contract termination decision. Thus, by holding the exercise of those activities to be a ground for loss of trust, the Parliament committed a manifest error of assessment.

24 The Parliament replies that an APA has a statutory obligation to follow a certain administrative procedure, namely to seek permission from the AECE to exercise an outside activity. In the present case, it is contended, the contract termination decision is motivated by the irreparable breakdown in the relationship of trust between the applicant and the MEP due to the failure by the applicant to comply with his obligations to declare outside activities pursuant to Article 12b of the Staff Regulations.

25 The Parliament states, in that regard, that, in the judgment of 11 September 2013 in *L* v *Parliament* (T-317/10 P, EU:T:2013:413, paragraphs 68 to 70), the Court held that the existence of a relationship of trust is not based on objective factors and by its very nature cannot be subject to judicial review, since the Court cannot substitute its assessment for that of the AECE, 'but [had to] confine itself to checking whether the facts referred to by the institution on which its decision was based [were] substantively correct'. That, it is contended, is the case here. The relationship of trust between the MEP and the applicant had been broken because the applicant had performed outside activities in breach of Article 12b(1) of the Staff Regulations. The Parliament points out, first of all, that it is undisputed that the applicant neither applied for nor received any authorisation to engage in an outside activity in accordance with that provision. Subsequently, during his meeting with the AECE and the Conciliator, the applicant repeatedly admitted to having carried out such activities. Finally, the applicant expressly confirmed the existence of outside activities in the note of 9 May 2016.

26 In that regard, the Parliament observes that, in accordance with the case-law, in order to establish that the administration committed a manifest error in assessing the facts such as to justify the annulment of a decision made on the basis of that assessment, the evidence, which it is for the applicant to adduce, must be sufficient to make the findings of the administration implausible. In other words, a plea alleging a manifest error of assessment must be rejected if, despite the evidence adduced by the applicant, the contested assessment can still be regarded as justified and coherent (see, to that effect, judgment of 13 June 2012, *Mocová* v *Commission*, F-41/11, EU:F:2012:82, paragraph 44 and the case-law cited). The applicant, it is contended, has not provided any evidence to make the findings of the Parliament implausible.

27 Under Article 139(1)(d) of the CEOS, 'apart from cessation on death, the employment of the accredited parliamentary assistant shall cease ... taking into account the fact that trust is the basis of the working relationship between the Member and his accredited parliamentary assistant, at the end of the period of notice stipulated in the contract ...'.

28 In the present case the AECE stated, in the contract termination decision, that the termination of the applicant's APA contract was motivated by the breakdown in the relationship of trust between the applicant and the MEP due to failure to observe the rules governing the exercise of outside activities.

29 In that regard, on the one hand, while it is not incumbent on the AECE to substitute its assessment for that of the parliamentarian concerned as to the reality of the breach of the relationship of trust, the AECE must nevertheless ensure that the reason given is based on facts that plausibly justify that assessment (see, to that effect, judgment of 10 January 2019, *RY* v *Commission*, T-160/17, EU:T:2019:1, paragraph 38 and the case-law cited).

30 On the other hand, where an institution which decides to terminate the contract of an APA refers, in particular, to a loss of trust as the basis for the contract termination decision, the Court is required to check if that ground is plausible. In doing so, the Court does not substitute its own appraisal for that of

the competent authority, which considers that the loss of trust has been established, but must confine itself to checking whether the ground underlying the decision as stated by the institution is vitiated by a manifest error of assessment (see, to that effect and by analogy, judgment of 11 September 2013, *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraph 70).

31 As regards, in the present case, the ground alleging loss of trust which led to the contract termination decision, the Parliament relies on facts consisting of undeclared outside activities. It must therefore be examined whether the Parliament committed a manifest error of assessment in considering that those facts were likely to result in the loss of trust claimed by the Member of the European Parliament (see, to that effect and by analogy, judgment of 11 September 2013, *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraph 76).

32 In that regard, it should be noted at the outset that the Parliament does not dispute, as such, the activities described by the applicant in the note of 9 May 2016 consisting in the exercise of a legal profession in parallel with his APA duties, namely:

– first, the lodging of applications for political asylum with the Russian, French, Swiss and Andorran authorities, to enable the MEP to avoid a sentence of four years' imprisonment imposed in [*confidential*], including an appeal against a decision to refuse asylum regarding the latter, in respect of which the applicant claims, inter alia, that he had been mandated by that MEP;

– secondly, canvassing and representing as a lawyer [*confidential*] nationals who are retired or receiving the minimum wage, in proceedings before the [*confidential*] courts, in order to present that MEP as a 'human rights defender' and thus make it more difficult for him to be imprisoned;

– thirdly, the representation of that MEP before the European Ombudsman, United Nations Human Rights Committee and the European Court of Human Rights in cases concerning that MEP, concerning, in the first place, inter alia, the challenge to the request to waive parliamentary immunity made by the [*confidentia*l] authorities, following the prison sentence imposed on the MEP in question in [*confidential*] and, in the second place, the challenge to a house arrest ordered by the [*confidential*] judicial authorities following criminal proceedings for corruption brought against the MEP in question.

33 On the contrary, in its response to the plea in law alleging inadequate reasoning, the Parliament relies on the note of 9 May 2016 to contend that the applicant was aware of the nature of the outside activities that led to the breakdown in the relationship of trust. In that regard, it does not appear from the file that the breakdown in that relationship referred to in the contract termination decision could have been caused by activities other than those invoked by the Parliament to justify the sufficiency of the statement of reasons.

34 In that context, it must be determined whether, in accordance with the case-law (see paragraphs 29 to 31 above), the exercise by the applicant of the outside activities in question could result in the breakdown of the relationship of trust invoked by the MEP and upheld by the AECE in the contract termination decision.

35 In that regard, in the first place, it is apparent from the evidence in the file that not only was the MEP aware of the outside activities in question, but that he was also at the direct initiative of those activities.

36 As regards, first of all, the proceedings brought before the [*confidential*] courts, it is apparent from the emails cited in the note of 9 May 2016 and produced by the applicant (Annexes A.3.3 and A.3.4 to that note) that the MEP personally supervised the organisation of the canvassing and representation of the [*confidential*] nationals concerned in the context of those proceedings and was therefore necessarily 'aware' of them.

37 That assessment is corroborated by the witness statement of a person contacted in the context of the proceedings in question (Annex A.3.5 to the note of 9 May 2016), according to which '[the MEP] [explained] beyond any doubt that the litigation would be free of charge, and that the [APA would] be paid for the job by [his] parliamentary allowances' and that, under the 'oral' agreement concluded with that MEP 'instead of paying for the litigation proposed by [that MEP] [the contacted person] had to support publicly the ... party during the legislative elections, to participate in TV and other media activities'.

38 As regards, then, the representation of the MEP before European or international courts or bodies, the applicant produces powers of attorney which he presents as signed by that MEP (Annexes A.3.6 and A.3.7 to the note of 9 May 2016), which the Parliament does not dispute.

39 Finally, with regard to the lodging of asylum applications on behalf of the MEP, the applicant states that, on 24 February 2013, that MEP made a public statement on [*confidential*] television indicating that, if the appellate court confirmed the prison sentence imposed on him, he would seek political asylum in the Member States of the European Union. In that regard, he attaches a press article corroborating that statement (Annex A.3.19 to the note of 9 May 2016). He also describes the steps taken to obtain political asylum for that MEP in Andorra, Switzerland, Russia and France and attaches flight tickets for those destinations (Annexes A.3.15 to A.3.18 to the said note). None of those documents and statements are contested by the Parliament.

40 It follows from the foregoing that the MEP could not have been unaware that the applicant practised a legal profession in parallel with his duties as an APA, since, as is apparent from the evidence on file, the exercise of such activities was in response to instructions from him.

41 In the second place, Article 6(2) of the Implementing Measures for Title VII of the CEOS, adopted by a decision of the Bureau of the Parliament on 9 March 2009 and last amended by a decision of the Bureau of the Parliament of 14 April 2014, provides that the Member responsible is to be 'heard', in the event of declaration of an outside activity. There is nothing to suggest that the MEP has been heard by the AECE regarding the 'outside activities' in question. In those circumstances, it must be held that that MEP could not plausibly be unaware that those activities, consisting in the exercise of a legal profession in the context of defending his own interests, had not been declared by the applicant to the AECE pursuant to Article 12b(1) of the Staff Regulations.

42 Consequently, the Parliament was clearly wrong to consider that the failure by the applicant to declare the outside activities in question could lead to a loss of trust on the part of the MEP within the meaning of Article 139(1)(d) of the CEOS, since that MEP could not claim to be unaware that those activities were not the subject of any request for authorisation from the Parliament, in accordance with Article 12b(1) of the Staff Regulations.

43 Moreover, it is apparent from the note of 9 May 2016 and the statement quoted in paragraph 37 above that the MEP could not reasonably expect that the outside activities in question, in view of their nature, would be brought to the attention of the Parliament through an official request for authorisation of outside activities under Article 12b(1) of the Staff Regulations.

44 In conclusion, contrary to what the Parliament contends (see paragraph 26 above), it is apparent from the documents in the file that the reason given by the MEP to justify the contract termination decision, namely the loss of trust, does not seem plausible. Therefore, by implementing that MEP's request to terminate the applicant's APA contract for that reason, the AECE committed a manifest error of assessment.

45 It is therefore necessary to declare the third plea in law to be well founded and to uphold the claim for annulment of the contract termination decision, without it being necessary to examine the other pleas in law, including the ninth plea, the admissibility of which is contested.

The claim for damages

46 In the application, the applicant claims that the Parliament should be ordered to pay him the sum of EUR 100 000 in compensation for the non-material damage which he claims to have suffered.

47 In the defence, the Parliament argues that the claim for damages is inadmissible in so far as it does not comply with the requirements referred to in Article 76(d) of the Rules of Procedure. According to the Parliament, while the application includes a claim for damages, no argument was submitted in support of that claim.

48 The applicant, in his reply, points out, in particular, that he has been the subject of harassment by the MEP. In that regard, he attaches the transcript of his interview with the Belgian police in which he claimed to have been kidnapped in the Parliament's premises (Annex A.3.14 to the note of 9 May 2016).

49 The Parliament reiterates, in the rejoinder, that, in accordance with the case-law, an application seeking compensation for damage caused by a European Union institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers there is a causal link between the conduct and the damage which he claims to have suffered, and the nature and extent of that damage. However, in the application, the applicant did not state the reasons for which he considers there is a causal link between the alleged conduct and the damage he claims to have suffered. The application, it is contended, makes no reference whatsoever to the nature and extent of that damage.

Admissibility of the claim for damages in respect of non-material injury

50 It should be noted, first, that it is sufficiently clear from the application that, according to the applicant, the decision to terminate the contract caused him non-material damage and, secondly, that the claim for compensation of that damage has been quantified.

51 In those circumstances, the Parliament cannot plead the inadmissibility of the claim for damages on the ground that the applicant did not precisely identify the nature and extent of the damage he claims to have suffered and the reasons why he considers that a causal link exists between the Parliament's conduct and that damage.

52 However, it should be noted that the acts of harassment referred to in the reply, allegedly attributable to the MEP, can be separated from the unlawful conduct alleged against the Parliament in the claim for annulment.

53 While the claim for damages is admissible even without a claim to that effect having previously been addressed to the administration, where there is a direct link between that claim and the action for annulment, the same is not true where the alleged harm is the result of faults or omissions committed by the administration that can be separated from the conduct referred to in the action for annulment. In the latter case, where the alleged harm results not from the measure whose annulment is sought but from faults and omissions allegedly committed, it is mandatory for the pre-litigation procedure to begin with a request calling on the administration to make good that harm (see, to that effect, judgment of 22 September 2015, *Gioria* v *Commission*, F-82/14, EU:F:2015:108, paragraph 74 and the case-law cited).

54 In the present case, it must be noted that no claim for damages was brought for the acts of harassment referred to by the applicant in the pre-litigation procedure, so that, assuming that the applicant also seeks damages for those acts of harassment, that claim must be dismissed as inadmissible for failing to comply with the rules governing the pre-litigation procedure.

55 It follows from the foregoing that the claim for damages is admissible only in so far as it relates to the damage linked to the decision to terminate the contract.

The merits of the claim for compensation for non-material damage linked to the contract termination decision

56 In accordance with settled case-law, the administration can be held liable in damages only if a number of conditions are satisfied: the illegality of the allegedly wrongful act committed by the institutions, actual harm suffered, and the existence of a causal link between the act and the damage alleged to have been suffered (see judgment of 1 June 1994, *Commission* v *Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 42 and the case-law cited).

57 In the present case, first of all, the unlawfulness of the Parliament's conduct has been established. Secondly, the basis of the ground given for the contract termination decision is artificial, which may have caused a feeling of injustice to the applicant and, as a result, non-material damage. Finally, there is a link between the Parliament's conduct and the damage alleged, which is the result of that decision.

58 However, as regards the non-material damage, it must be pointed out that according to the settled case-law of the Court of Justice and of the General Court, the annulment of an administrative act challenged by an official in itself constitutes appropriate and, in principle, sufficient reparation for any non-material damage which that official may have suffered and that the claim for damages is devoid of purpose (see, to that effect, judgments of 7 February 1990, *Culin* v *Commission*, C-343/87, EU:C:1990:49, paragraph 26, and of 21 January 2004, *Robinson* v *Parliament*, T-328/01, EU:T:2004:13, paragraph 79).

59 It is true that the Courts of the Union have allowed certain exceptions to that rule and, in particular, the following exceptions. In the first place, the annulment of the administration's unlawful act cannot constitute full reparation for the non-material damage if that act contains an assessment of the abilities and conduct of the person concerned which is capable of offending him. In the second place, annulment of the contested act cannot constitute full reparation for the non-material damage suffered where the illegality committed is particularly serious. In the third place, it has been held that, where the annulment of an unlawful act has no practical effect, it cannot in itself constitute appropriate and sufficient compensation for any non-material damage caused by the annulled act (see judgments of 9 March 2010, *N* v *Parliament*, F-26/09, EU:F:2010:17, paragraphs 103, 105 and 107 and the case-law cited, and of 5 July 2011, *V* v *Parliament*, F-46/09, EU:F:2011:101, paragraphs 169, 171 and 173 and the case-law cited).

60 However, in the present case, it does not appear that the applicant is in one of the situations listed in paragraph 59 above. First, the decision to terminate the contract based on the non-declaration of outside activities does not include any assessment of the applicant's abilities or conduct likely to cause him harm; secondly, the illegality committed by the Parliament is not particularly serious within the meaning of the case-law; thirdly, the annulment of the contract termination decision is in no way deprived of any useful effect.

61 It follows from all the foregoing that the claim for damages must, in the present case, be rejected.

Costs

62 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

63 Since the Parliament has, in essence, failed in its submissions and the applicant has applied for costs, the Parliament must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. Annuls the Parliament's decision of 24 June 2016 to terminate L's contract as an accredited parliamentary assistant;

2. Dismisses the action as to the remainder;

3. Orders the European Parliament to pay the costs.

Gervasoni Madise da Silva Passos

Delivered in open court in Luxembourg on 7 March 2019.

E. Coulon
Registrar

S. Gervasoni
President