



# Reports of Cases

OPINION OF ADVOCATE GENERAL

PIKAMÄE

delivered on 7 December 2023<sup>1</sup>

**Case C-680/22 P**

**DD**

**v**

**European Union Agency for Fundamental Rights (FRA)**

(Appeal – Civil Service – Disciplinary measures – Removal from post – Opening of an administrative investigation – Prima facie evidence – Article 86(2) of the Staff Regulations of Officials of the European Union – Objective impartiality of the investigator – Concept of ‘plagiarism’ – Action for annulment and damages)

## I. Introduction

1. By his appeal, the appellant seeks to have set aside the judgment of the General Court of the European Union of 7 September 2022, *DD v FRA* (T-470/20, ‘the judgment under appeal’, EU:T:2022:511), by which that court dismissed his action seeking, first, annulment of the decision of the European Union Agency for Fundamental Rights (FRA) of 12 November 2019 imposing on him the disciplinary sanction of removal from post (‘the decision to remove from post’) and of the decision of 15 April 2020 rejecting the complaint against the decision to remove from post and, secondly, compensation for the material and non-material damage which he allegedly suffered.

2. The appeal, which falls within the scope of EU civil service law, contains eight grounds of appeal, in which the appellant claims that the General Court committed a number of errors of law. In accordance with the request of the Court of Justice, this Opinion will focus on the fourth ground of appeal, in which the appellant, in essence, criticises the General Court’s assessment of the lawfulness of opening an administrative investigation in the context of disciplinary proceedings. Specifically, the appellant claims that the General Court committed a manifest error of assessment of the condition relating to the need for the administration to have prima facie evidence to support the opening of such an investigation.

3. The present case gives the Court of Justice an opportunity to rule on the requirements to be complied with regarding the requisite standard of proof for the opening of such an administrative investigation. Similarly, the Court will be required to form a view on the degree of precision with which the administration must identify the failures to comply with obligations under the Staff Regulations which it alleges against the official concerned, and on whether the administration is

<sup>1</sup> Original language: French.

required to indicate the specific provisions of the Staff Regulations of Officials of the European Union, in the version applicable to the dispute ('the Staff Regulations') that have allegedly been infringed. In so doing, the Court will have occasion to develop its case-law relating to procedural safeguards within the EU system of disciplinary measures.

## II. Legal framework

### **The Staff Regulations of Officials of the European Union**

4. The first paragraph of Article 11 of the Staff Regulations provides:

'An official shall carry out his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.'

5. Article 12 of the Staff Regulations provides:

'An official shall refrain from any action or behaviour which might reflect adversely upon his position.'

6. Article 21 of the Staff Regulations reads:

'An official, whatever his rank, shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him.'

An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities.'

7. Article 86 of the Staff Regulations, contained in Title VI of those regulations, entitled 'Disciplinary measures', reads as follows:

'1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.'

2. Where the Appointing Authority or [the European Anti-fraud Office ("OLAF")] becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred.'

3. Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX.'

8. Article 1 of Annex IX to the Staff Regulations reads:

'1. Whenever an investigation by OLAF reveals the possibility of the personal involvement of an official, or a former official, of an institution, that person shall rapidly be informed, provided this is not harmful to the investigation. In any event, conclusions referring by name to an official may not

be drawn once the investigation has been completed without that official concerned having been given the opportunity to comment on facts concerning him. The conclusions shall make reference to these comments.

2. In cases that demand absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the official to comment may, in agreement with the Appointing Authority, be deferred. In such cases, no disciplinary proceedings may be opened before the official has been given a chance to comment.

3. If, following an OLAF investigation, no case can be made against an official about whom allegations have been made, the investigation in question shall be closed, with no further action taken, by decision of the Director of OLAF, who shall inform the official and his institution in writing. The official may request that this decision be inserted in his personal file.'

9. Article 2 of Annex IX to the Staff Regulations provides:

'1. The rules set out in Article 1 of this Annex shall apply, with any necessary changes, to other administrative enquiries carried out by the Appointing Authority.

2. The Appointing Authority shall inform the person concerned when the investigation ends, and shall communicate to him the conclusions of the investigation report and, on request and subject to the protection of the legitimate interests of third parties, all documents directly related to the allegations made against him.

...'

### **III. Background to the dispute, the proceedings before the General Court and the judgment under appeal**

#### ***A. Background to the dispute***

10. The appellant was recruited on 1 August 2000 by the authority empowered to conclude contracts of employment ('the AECC') of a body of the European Union, the European Monitoring Centre on Racism and Xenophobia (EUMC), now FRA, as a member of the temporary staff within the meaning of Article 2(a) of the Conditions of Employment of Other Servants of the European Union ('the CEOS'). Initially employed under a fixed-term contract, he was given a contract of indefinite duration from 16 December 2006.

11. By letter of 13 June 2013, the then Director of FRA informed the appellant of his decision to terminate the appellant's contract.

12. By judgment of 8 October 2015, *DD v FRA* (F-106/13 and F-25/14, EU:F:2015:118), the Civil Service Tribunal annulled the termination decision on the grounds that, prior to the adoption of the decision, the Director of FRA had not expressly informed the appellant that, on the basis of various incidents, he was considering terminating his contract, and had not invited him to express any comments he might have on that matter.

13. On 29 February 2016, FRA, under a new director, reinstated the appellant in his position, as part of the execution of the judgment of 8 October 2015, *DD v FRA* (F-106/13 and F-25/14, EU:F:2015:118).

14. By email of the same day, the appellant was asked by his head of department to prepare a 15- to 20-page internal brief, by 18 March 2016 at the latest, on human rights standards and the case-law related to freedom of thought, conscience and religion, at international and EU level.

15. By email of 18 March 2016, the appellant sent to his head of department a 31-page document described as a ‘very first tentative draft of the brief on freedom of religion’, entitled ‘Internal Brief on possible relevant FRA projects on the freedom of thought, conscience and religion’ (‘the brief at issue’).

16. At the beginning of April 2016, the brief at issue was stored in FRA’s document management system, to which all the appellant’s colleagues had access.

17. On 7 April 2016, the appellant’s head of department informed the appellant that he had forwarded the brief at issue to the Director of FRA and invited him to send the link to the document in the FRA’s document management system to one of his colleagues so that he could read that document and the analysis contained therein.

18. By email of 16 October 2017, the appellant’s head of department asked him to revise the brief at issue and to expand on the analysis devoted to freedom of religion from the European Union’s point of view, in view of possible publication.

19. Furthermore, on 7 November 2017, the appellant lodged an internal appeal against his appraisal report for the year 2016, arguing that the assessment of his effectiveness, capacity and conduct should have been ‘very good’, instead of ‘satisfactory’. In that context, with regard to the brief at issue, first, the appellant argued that it was regrettable that, while during the appraisal dialogue his head of department, in his capacity as assessor, had confirmed that the presentation was very useful and achieved its purpose, he had criticised it in his subsequent comments. Secondly, the appellant argued that the assessor’s comments on the fact that the brief at issue consisted mainly of case-law references were inaccurate, as the presentation also contained a legal, conceptual and policy analysis.

20. On 1 December 2017, the appellant submitted a revised version of the brief at issue.

21. On 5 December 2017, the Director of FRA rejected the internal appeal brought by the appellant against his 2016 appraisal report. On that occasion, the Director of FRA stated that he had learned that the brief at issue was, to a very large extent, a direct copy of several sources, including Council of Europe documents, which were not referenced in that brief, and that the appellant had not informed his head of department of that state of affairs, leading him to believe that that brief was the result of his own work.

22. On 9 February 2018, the Director of FRA consulted OLAF about the possible opening of an administrative investigation into the appellant’s conduct.

23. On 20 March 2018, OLAF decided not to open an investigation due to the fact that there were ‘not sufficient elements indicating that a potential fraud, corruption or other illegal activities have occurred’.

24. On 23 March 2018, the Director of FRA opened an administrative investigation into the conduct of the appellant in relation to the brief at issue. The investigating officer declared an absence of conflict of interest. The purpose of that investigation was to determine, first, the precise extent to which the brief at issue had been presented by the appellant as the result of his own work and included extracts from documents external to FRA which were not cited or referenced, secondly, which of those documents, if any, were covered by copyright, thirdly, whether there were other documents written by the appellant in the context of his work at FRA in the field of freedom of thought, conscience and religion which met the two conditions mentioned above and, fourthly, where appropriate, whether there had been any infringement of the Staff Regulations or of intellectual property law.

25. On 23 and 24 April 2018, the investigator interviewed seven witnesses and the appellant, who provided the investigator with written observations.

26. On 17 June 2018, the investigator sent the appellant his preliminary findings.

27. On 2 July 2018, the appellant made observations on the investigator's preliminary findings.

28. On 23 July 2018, the investigator submitted his final report ('the investigation report'), which concluded that the appellant had failed to comply with Articles 11, 12 and 21 of the Staff Regulations and with his duties of loyalty and cooperation. The investigator found, in essence, first, that copying and using the work of others without reference to it and passing it off as his own constituted a form of deception, dishonesty and misappropriation contrary not only to Article 12 of the Staff Regulations but also to almost any moral standard, secondly, that the appellant had deliberately misled the members of his department and concealed important information, thereby infringing Articles 11 and 12 of the Staff Regulations, thirdly, that the fact that the appellant had taken three weeks to draft the brief at issue, which was largely a copy, constituted another, relatively minor, infringement of Article 12 of the Staff Regulations, fourthly, that the reference to the brief at issue as an achievement in the context of his assessment for the year 2016 was misleading and also constituted an infringement of Article 12 of the Staff Regulations, fifthly, that the use of copyrighted material without informing the author, namely the Council of Europe, further infringed Article 12 of the Staff Regulations, sixthly, that the appellant had acted in a misleading and/or dishonest manner and, as a result, had not acted solely with the interests of the European Union in mind, in breach of Article 11 of the Staff Regulations and the duty of loyalty, and, seventhly, that the use of the work of others without reference to it and without informing his superiors infringed Article 21 of the Staff Regulations and the appellant's duty of cooperation.

29. On 15 October 2018, the appellant was heard by the Director of FRA under Article 3 of Annex IX to the Staff Regulations and subsequently submitted a written statement, dated the same day.

30. By a decision of 23 October 2018, the Director of FRA initiated disciplinary proceedings before the Disciplinary Board against the appellant. That decision was notified to the appellant on 7 November 2018.

31. On 26 February 2019, the Disciplinary Board was constituted by decision of the Director of FRA.

32. On 27 February 2019, the Director of FRA prepared the report to the Disciplinary Board pursuant to Article 12 of Annex IX to the Staff Regulations ('the report of the Director of FRA').

33. On 21 March 2019, the appellant submitted his statement of defence to the Chair of the Disciplinary Board.

34. On 22 March 2019, the appellant's hearing before the Disciplinary Board took place.

35. On 7 May 2019, the Disciplinary Board issued a reasoned opinion, in accordance with Article 18 of Annex IX to the Staff Regulations, finding that the accusations of conduct contrary to the appellant's obligations under Articles 11, 12 and 21 of the Staff Regulations were well founded, namely presenting documents written by other people as his own without acknowledging the sources thereof. The Disciplinary Board recommended that the appellant be demoted by two grades, to grade AD 7. The Disciplinary Board did not mention any mitigating circumstances.

36. The Disciplinary Board noted, in essence, first, that the appellant had acted not with solely the interests of the European Union in mind, but with his own interests in seeking credit for a text of which he was not the author, secondly, that he had not adopted the responsible behaviour expected of an agent of FRA, thirdly, that his actions could have caused damage to FRA's reputation, and fourthly, that he had not assisted his superiors, or had even acted against them, by presenting the work of others as his own.

37. Thus, the Disciplinary Board found that the appellant had infringed, first, Article 11 of the Staff Regulations, by deliberately presenting copied work as his own, secondly, Article 12 of the Staff Regulations, in so far as presenting the work of others as his own would have had an adverse effect on the appellant's reputation, and thirdly, Article 21 of the Staff Regulations, in so far as the appellant had not carried out the tasks entrusted to him, but had presented the work of others as his own and there was a risk that the brief at issue, or parts of it, would be incorporated in one or more documents published by FRA, which could have had an adverse effect on the reputation of the latter.

38. On 11 July 2019, the appellant was heard by the Director of FRA in accordance with Article 22 of Annex IX to the Staff Regulations and submitted his written statement.

39. On 11 October 2019, the appellant received a note from the Director, dated 10 October 2019, expressing his intention to impose the sanction of removal from post and inviting him to submit his observations in that regard in writing within 10 working days.

40. On 24 October 2019, the appellant sent his observations to the Director of FRA.

41. On 12 November 2019, the Director of FRA, as the AECC, adopted the decision to remove from post, taking effect on 15 November 2019. In that decision, the Director of FRA endorsed the conclusions of the Disciplinary Board, except for the proposed sanction, as he considered that downgrading did not sufficiently reflect the seriousness of the breaches of professional obligations under Articles 11, 12 and 21 of the Staff Regulations. The Director of FRA noted, in particular, first, that the Disciplinary Board had not referred to any mitigating circumstances, but had mentioned aggravating circumstances, namely that the appellant's conduct was deliberate,

that he had tried to obtain personal credit for work that constituted plagiarism, that he had not recognised the seriousness of his conduct and that there had been a real risk of damage to FRA's reputation and, secondly, that the bond of trust had been seriously undermined.

42. Furthermore, the Director of FRA considered that the Disciplinary Board had not sufficiently taken into account the seriousness of the infringements of the Staff Regulations with regard to, first, the conduct of the appellant, which the Director of FRA described as an 'infringement of the utmost seriousness' and, secondly, the effects of such conduct on FRA's reputation, since, in his view, the appellant, acting alone, had deliberately created a serious risk of damage to that reputation over a considerable period of time. The Director of FRA agreed with the Disciplinary Board's finding that the bond of trust had been seriously undermined, but considered that that bond had been irrevocably broken and, therefore, that downgrading was not an appropriate sanction.

43. On 16 December 2019, the appellant lodged a complaint against the decision to remove from post.

44. On 15 April 2020, the Director of FRA issued the decision rejecting that complaint.

### ***B. Proceedings before the General Court and the judgment under appeal***

45. By application lodged at the Registry of the General Court on 23 July 2020, the appellant had brought an action under Article 270 TFEU seeking annulment of the decision to remove from post and, if need be, of the decision rejecting that complaint, and compensation for the material and non-material damage he allegedly suffered.

46. In support of his action, the appellant had put forward eight principal pleas in law and one plea in law in the alternative:

- first plea, infringement of the principle of legal certainty, errors of law and a manifest error of assessment, infringement of Paragraph 7(1) of the Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte (Urheberrechtsgesetz) (Law on copyright in literary and artistic works and related rights) of 9 April 1936 (BGBl. 1936, 111/1936) and infringement of Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), in that, first, plagiarism was considered to constitute a breach of the Staff Regulations, secondly, the copied texts were not protected by that law, and, thirdly, his freedom of expression was infringed;
- second plea, breach of the duties of diligence and care by the investigator and by the Director of FRA at the time of the initiation of the disciplinary procedure, by the decision to remove from post and by the Disciplinary Board and also breach of the presumption of innocence and of the requirement of a high standard of proof in administrative investigations and disciplinary proceedings;
- third plea, lack of neutrality, impartiality and objectivity on the part of the Director of FRA as the AECC, breach of the presumption of innocence and abuse of power;
- fourth plea, manifest errors of assessment concerning the appellant's infringement of Articles 11, 12 and 21 of the Staff Regulations;

- fifth plea, unlawful initiation of the administrative investigation in the absence of any prima facie evidence, and unlawful initiation of the disciplinary procedure;
- sixth plea, non-compliance with the framework of the investigation by the investigator and infringement of Article 4(2) and Article 7(6) of FRA Management Board Decision 2013/01 of 22 May 2013 on the conduct of administrative investigations and disciplinary proceedings, of Article 4(1)(a) to (d) and Article 5(1)(a) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39), and, prior to the applicability of Regulation 2018/1725, of Article 4(1)(a) to (d) and Article 5(1)(a) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1), and of the infringement of the effects of an annulment judgment;
- seventh plea, the investigator’s lack of impartiality, neutrality and objectivity;
- eighth plea, infringement of the rights of the defence, in particular the right to be heard, infringement of Articles 1, 2 and 12 of Annex IX to the Staff Regulations; and
- ninth plea, in the alternative, breach of the principle of proportionality by imposing the sanction of removal from post in respect of the facts alleged against the appellant.

47. In the judgment under appeal, the General Court rejected the appellant’s claims for annulment and for damages in their entirety. The General Court also decided that there were no grounds for granting the appellant’s requests for measures of organisation of procedure.

#### **IV. Proceedings before the Court of Justice and forms of order sought**

##### ***A. Proceedings before the Court of Justice***

48. In accordance with Article 76(2) of the Rules of Procedure, the Court decided to proceed without a hearing.

##### ***B. Forms of order sought***

49. The appellant claims that the Court should:

- set aside the judgment under appeal;
- consequently, annul the decision of the Director of FRA of 12 November 2019 to issue the disciplinary sanction of removal from post effective 15 November 2019, and, if need be, annul the decision of the Director of FRA of 15 April 2020 rejecting the complaint, and compensate the material and non-material damage suffered by the appellant; and
- order FRA to pay all the costs.

50. FRA contends that the Court should:

- dismiss the appeal; and
- order the appellant to bear all the costs.

## **V. Legal assessment**

### ***A. Preliminary observations***

51. As I stated in the introduction, this Opinion will focus solely on the fourth ground of appeal. It should be noted that the present case is somewhat complex since other EU Courts have delivered judgments on the facts in this dispute. In order to have a better understanding of the legal issues at the heart of this case I think it appropriate to provide a concise summary of them before embarking on the actual legal assessment.

52. The legal issues involved concern, first, the requirements to be complied with as regards the requisite standard of proof for the initiation of an administrative investigation in the context of disciplinary proceedings, secondly, the degree of precision with which the administration must identify failures by the official concerned to comply with his obligations under the Staff Regulations and, thirdly, the administration's obligation to state the specific provisions of the Staff Regulations which have been infringed. In my assessment I shall indicate which provisions of the Staff Regulations govern disciplinary proceedings, and in particular the investigation stage, in order to examine subsequently whether the General Court's reasoning meets the requirements of that regulatory framework.

53. More specifically, I shall show that the General Court did not examine the lawfulness of the opening of the investigation procedure under Article 86 of the Staff Regulations. The General Court failed in particular to make clear that the opening of such an investigation in respect of an official is justified only where there is reason to suppose that the latter has failed to fulfil his or her obligations under the Staff Regulations. Since the General Court appears to have started from the premiss that such a step is also possible when it is a matter of sanctioning an alleged copyright infringement, its reasoning is in my view vitiated by an error of law.

### ***B. Fourth ground of appeal***

#### ***1. Arguments of the parties***

54. In its fourth ground of appeal, the appellant claims in essence that in paragraphs 101, 106, 107, 111 to 113 and 122 of the judgment under appeal the General Court committed a number of errors of law and manifest errors of assessment, and distorted the evidence, during its examination of the lawfulness of opening the administrative investigation, and that it failed to provide sufficient reasoning in that connection.

55. The appellant contends, first, that the General Court distorted the evidence and committed a manifest error of assessment in paragraph 107 of the judgment under appeal, since it is clear from the documents in the case that the OLAF consultation was attached only to the report of the

Director of FRA and that the appellant did not receive it until after 27 February 2019. Consequently, the appellant was not informed of the content of the OLAF consultation when the investigation was opened on 23 March 2018 or, moreover, when the disciplinary proceedings were opened on 23 October 2018. The General Court therefore erred in law in concluding that the appellant had been sufficiently informed when the investigation was opened and in applying by analogy the case-law established in the judgment of 5 October 2005, *Rasmussen v Commission* (T-203/03, EU:T:2005:346).

56. He argues, secondly, that the General Court failed to assess the legal context in which the opening of an administrative investigation takes place. According to the appellant, it is necessary to take into account the wording of Article 86(1) and (2) of the Staff Regulations, which speaks of evidence of failure to comply with the Staff Regulations, meaning a reasonable suspicion based on *prima facie* evidence. The verification of a reasonable suspicion of a failure to comply with the Staff Regulations based on *prima facie* evidence constitutes therefore the sole legitimate purpose of an administrative investigation. Moreover, the appellant considers that an administrative investigation is, by definition, a data processing operation which, according to Article 4 of Regulation No 45/2001, requires a ‘specified, explicit and legitimate purpose’.

57. The appellant adds that the General Court erred in law in stating that Articles 1 and 2 of Annex IX to the Staff Regulations do not require the appointing authority to indicate the specific provisions of the Staff Regulations which have been infringed, since that question falls within the scope of Article 86(2) of the Staff Regulations and Regulation No 45/2001 instead. Lastly, the appellant points out that Article 86(2) of the Staff Regulations provides that an administrative investigation may only be opened in order to verify a breach of the Staff Regulations, not a breach of intellectual property law, which is independent of the Staff Regulations.

58. The appellant contends, thirdly, that the General Court erred in law in paragraph 111 of the judgment under appeal by not applying the case-law established in the judgment of 8 July 2008, *Franchet and Byk v Commission* (T-48/05, EU:T:2008:257), upheld by the judgment of 12 July 2012, *Commission v Nanopoulos* (T-308/10 P, EU:T:2012:370), which requires the administration to have evidence which is sufficiently precise and relevant before initiating disciplinary proceedings.

59. FRA contends that the fourth ground of appeal is inadmissible and adds that, in any event, it is manifestly unfounded. It maintains that in the context of that ground the appellant is merely contesting factual findings while attempting to dress them up as a legal argument. More specifically, it contends in essence that the questions, first, whether or not there was a reasonable suspicion of a disciplinary offence based on evidence and, secondly, whether the appellant was in a position to understand what he was accused of constitute points of fact.

## 2. Assessment

### (a) *The regulatory framework governing an administrative investigation*

60. Before examining in depth the legal questions raised by this case, it seems to me necessary to give a brief outline of the regulatory framework governing an administrative investigation in disciplinary matters.

61. From the outset, it should be noted that, according to Article 86(3) of the Staff Regulations, ‘disciplinary rules, procedures and measures and *the rules and procedures covering administrative investigations* are laid down in Annex IX’ to those staff regulations (emphasis added). It is clear from the provisions contained in that annex that disciplinary proceedings consist of two separate phases, the first being the administrative investigation – in which incriminating and exonerating evidence is investigated – initiated by a decision of the appointing authority and closed, after the official concerned has been heard concerning the alleged facts, by an investigation report, and the second being the disciplinary proceedings properly so-called, initiated by the appointing authority on the basis of the investigation report, which assumes that the official was heard before a penalty applicable to him or her was adopted by the appointing authority.<sup>2</sup>

62. In the Opinion I delivered in *DD v FRA* (C-587/21 P), I had the opportunity to state my position on the interpretation of Article 3 of Annex IX to the Staff Regulations, the purpose of which is to regulate the options available to the administration at the end of the investigation stage. The present case is different from the abovementioned case in so far as it relates to the possibility of opening an administrative investigation. It therefore concerns the initial stage of the procedure regulated in that annex.

63. In that regard, it should be observed that Article 86(2) of the Staff Regulations states that ‘where the Appointing Authority or OLAF becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations *to verify whether such failure has occurred*’ (emphasis added). Article 86(1) states that ‘*any failure by an official or former official to comply with his obligations under these Staff Regulations*, whether intentionally or through negligence on his part, shall make him liable to disciplinary action’ (emphasis added). It may therefore be concluded from a combined reading of those paragraphs that Article 86(2) of the Staff Regulations gives the administration the power to open an investigation based on an alleged *failure by an official to comply with obligations under the Staff Regulations*. The question whether disciplinary proceedings may extend to include proceedings in respect of other types of infringement, such as copyright infringements, as would seem to be suggested by several statements made by the General Court in the judgment under appeal, in my opinion deserves thorough analysis in the context of the present Opinion.

64. Furthermore, it is apparent from the case-law of the General Court that the decision to open an administrative investigation does not constitute an act having adverse effect, open to complaint, and also, if appropriate, to an action for annulment before the EU Courts.<sup>3</sup> As is clear from the actual wording of that provision, *the whole purpose of the investigation is to enable the appointing authority to verify whether there has been a failure on the part of officials to comply with their obligations*, which excludes the administration having already formed a definitive opinion. In that context, it should not be forgotten either that the official concerned is covered by the principle of the presumption of innocence, which means that the administration must remain measured in statements it makes in the course of disciplinary proceedings. In accordance with the objective recalled above, Article 3 of Annex IX to the Staff Regulations requires such an investigation as a prerequisite for any disciplinary proceedings.<sup>4</sup>

<sup>2</sup> Judgment of 14 October 2021, *Bernaldo de Quirós v Commission* (C-583/19 P, EU:C:2021:844, paragraph 56).

<sup>3</sup> Judgments of 13 March 2003, *Pessoa e Costa v Commission* (T-166/02, EU:T:2003:73, paragraph 59), and of 8 July 2008, *Franchet and Byk v Commission* (T-48/05, EU:T:2008:257, paragraph 367).

<sup>4</sup> Judgment of 14 February 2017, *Kerstens v Commission* (T-270/16 P, EU:T:2017:74, paragraphs 61 and 62).

65. Although the institutions enjoy broad discretion as regards the opening of an administrative investigation, *there must be nonetheless a reasonable suspicion that a breach of discipline has been committed*.<sup>5</sup> In other words, they must have ‘prima facie evidence’ against the person concerned.<sup>6</sup> In order to protect the rights of the official concerned, the administration must satisfy itself, before instituting an investigation, that it has evidence suggesting that the person concerned has breached his obligations under the Staff Regulations and, before instituting disciplinary proceedings, that it has information and evidence which is sufficiently definite and relevant to support its suspicions. It seems essential to impose such a requirement in respect of the opening of an investigation in view of the serious and irrevocable consequences likely to arise from disciplinary proceedings.<sup>7</sup>

66. In the Opinion I delivered in Case *DD v FRA* (C-587/21 P), I drew attention to the risk of damage to the integrity and professional reputation of the official concerned. In that context, I stated that the administration was obliged to examine the truth and gravity of the facts alleged against the official before taking a decision to open the disciplinary proceedings. In support of my line of argument, I cited several provisions of Annex IX – namely Article 22(2), Article 27 and Article 29 – which show clearly that the legislature, when adopting the Staff Regulations, was fully aware of the negative impact the unjustified initiation of disciplinary proceedings might have on an official’s reputation.<sup>8</sup>

67. First, strict requirements must be imposed as regards the standard of proof, in view of the need to protect the rights of the official concerned. Secondly, it should be noted that the provisions cited in the points above refer to a situation in which the disciplinary proceedings properly speaking have already been opened, while the present case relates instead to the question of the threshold required in order to support the opening of an administrative investigation. As the purpose of such an investigation is specifically to enable the administration to verify whether there has been failure on the part of officials to comply with their obligations, I consider it would be unreasonable to impose the same requirements at both stages of the proceedings. It seems more reasonable to afford the administration a certain amount of discretion at the initial stage of the proceedings. That question will also form the subject of a thorough analysis in the context of the present Opinion.

*(b) The obligations of an official which may be the subject of an administrative investigation if he or she fails to comply with them*

68. The first question to examine concerns the obligations of an official which may form the subject of an administrative investigation if he or she fails to comply with them. As I stated above, Article 86(1) of the Staff Regulations refers to the ‘...official ... to comply with his obligations *under these ... Staff Regulations*’ (emphasis added). The words used in all the language versions in my view leave no doubt as to the fact that these are *obligations which stem specifically from the Staff Regulations*. That is a logical conclusion, since the rules governing the relationship between an official and his or her institution have, for the most part, been codified in those staff regulations.

<sup>5</sup> Judgment of 13 January 2010, *A and G v Commission* (F-124/05 and F-96/06, EU:F:2010:2, paragraphs 173 and 188).

<sup>6</sup> Judgment of 19 June 2013, *Goetz v Committee of the Regions* (F-89/11, EU:F:2013:83, paragraph 185).

<sup>7</sup> Judgment of 12 July 2012, *Commission v Nanopoulos* (T-308/10 P, EU:T:2012:370, paragraph 150).

<sup>8</sup> See point 70 et seq. of my Opinion in *DD v FRA* (C-587/21 P).

69. Although the rules of law governing the civil service are found at all levels of the hierarchy of norms of the EU legal order, *the Staff Regulations constitute the central text of the rules applicable to officials* working within the EU institutions, since they lay down in detail, among other things, their rights and obligations.<sup>9</sup> The same applies also, so far as other staff of the European Union are concerned, as regards the CEOS, in particular where those rules provide for the application of the provisions of the Staff Regulations by analogy to other staff, which is the case of Articles 11 to 26a.<sup>10</sup>

70. However, the theory that it is incumbent on the EU administration to sanction other breaches of the law, including national intellectual property law, does not seem to me very convincing. Especially since it is not by any means certain in the present case that such breaches of national law have criminal consequences;<sup>11</sup> that might raise the question of the applicability of Article 23 of the Staff Regulations, which provides that EU officials and other members of staff are required to '[comply] with the laws and police regulations in force', including criminal law.<sup>12</sup> *It is not only the wording of Article 86(2) of the Staff Regulations which runs counter to that theory, but the very purpose of the system of disciplinary measures, which concerns solely the employment relationship between the official and the institution.* It is true that that circumstance does not prevent the way in which an official carries out his or her duties being subject to certain rules that are not expressly laid down in the Staff Regulations, with the result that infringement of them might lead to disciplinary measures.

71. In that regard, *however, it is necessary for those rules to become a constituent part of the legal instrument which establishes the employment relationship*, since otherwise there is no assurance that the official will be bound by them. Furthermore, they must be rules which embody the obligations laid down in Article 11 et seq. of the Staff Regulations sufficiently precisely to ensure that the official becomes aware of them and fully complies with them. Such an approach seems to me to be essential, especially since Article 11 et seq. of the Staff Regulations are *worded in fairly abstract, general terms, often using vague legal concepts*, as the appellant rightly points out. That is precisely why the content of some of an official's obligations has been addressed and clarified in codes of good behaviour adopted by the institutions.<sup>13</sup>

72. Article 12 of the Staff Regulations, at the heart of the General Court's examination, has been interpreted by the EU Courts to mean that that provision is intended to ensure that officials, in their conduct, present a dignified image in keeping with the particularly correct and respectable behaviour which one is entitled to expect from members of an international civil service and that that provision, in the same way as Articles 11 and 21 of the Staff Regulations, constitutes one of the specific expressions of the duty of loyalty which is incumbent on all officials. The duty of loyalty means not only that the official concerned must refrain from conduct which might reflect adversely upon his or her position and is detrimental to the respect due to the institution and its authorities, but also that he or she must conduct himself or herself, particularly if he or she is of senior grade, in a manner that is beyond any suspicion in order that the relationship of trust

<sup>9</sup> See, in that regard, my Opinion in *PV v Commission* (C-640/20 P, EU:C:2022:736, point 69).

<sup>10</sup> Pilorge-Vrancken, J., *Le droit de la fonction publique de l'Union européenne*, Bruylant, Namur, 2017, p. 248.

<sup>11</sup> It is not clear from the file whether copyright infringement as governed by the Austrian legislation is punishable under criminal law or whether that legislation comes under public policy.

<sup>12</sup> See, in that regard, my Opinion in *PV v Commission* (C-640/20 P, EU:C:2022:736, point 77).

<sup>13</sup> Pilorge-Vrancken, J., *Le droit de la fonction publique de l'Union européenne*, Bruylant, Namur, 2017, p. 169.

between that institution and himself or herself may at all times be maintained.<sup>14</sup> Although that case-law helps the meaning of that provision to be understood, *it cannot take the place of work obligations defined in detail by the institution in its internal legal acts.*

73. A high level of precision with regard to the obligations of an official is essential in order to prevent any risk of abuse on the part of the administration. In view of the power of the administration to adopt disciplinary measures in respect of an official, *the latter must have the option to seek judicial review of such measures.* In that regard, it should be noted that although a decision to open disciplinary proceedings is not regarded as an act adversely affecting an individual within the meaning of Article 91 of the Staff Regulations, it may nonetheless be contested indirectly in an action against a final disciplinary decision adversely affecting the official.<sup>15</sup>

74. Furthermore, it is clear from case-law that the fact that disciplinary proceedings have been terminated without a disciplinary measure being taken in respect of the official in question cannot prevent the EU Court from carrying out a review of the legality of the decision to bring disciplinary proceedings against the person concerned.<sup>16</sup> The right to effective judicial protection, as enshrined in Article 47 of the Charter, would be seriously undermined if the EU judicature was not in a position to *verify itself whether the official concerned actually failed to comply with his or her obligations under the Staff Regulations, as embodied, where appropriate, in internal legal acts.* A prior and sufficiently detailed definition of an official's obligations thus contributes to ensuring effective judicial protection.

75. So far as the present case is concerned, it should be noted that in paragraph 16 of the judgment under appeal the General Court states that *the purpose of the investigation was to determine whether the Staff Regulations or intellectual property law had been infringed.* In that regard, I note that the General Court does not rule either on the scope of Article 86(2) of the Staff Regulations or on the possibility that that provision might exclude any option for sanctioning infringements of intellectual property law in the context of disciplinary proceedings, as I explained above. Although the General Court refers to Articles 11, 12 and 21 of the Staff Regulations, it nonetheless accepts itself, in paragraph 65 of the judgment under appeal, that 'plagiarism' is not mentioned as unlawful conduct in any of those provisions. The General Court's reasoning *does not therefore make it possible to recognise clearly whether the appellant is accused of breach of copyright, as governed by the Austrian law, or of failure to comply with his obligations under the Staff Regulations.*

76. Furthermore, it should be noted that the General Court examines, in paragraph 66 et seq. of the judgment under appeal, whether the appellant's conduct might have reflected adversely upon his position, under Article 12 of the Staff Regulations. However, the reasoning contained in paragraph 68 of the judgment under appeal does not show on which legal instrument the General Court bases its conclusion. On the contrary, the General Court merely sets out considerations of a general nature concerning the concept of 'plagiarism' in the fields of art and

<sup>14</sup> See, to that effect, judgments of 15 May 1997, *N v Commission* (T-273/94, EU:T:1997:71, paragraphs 127 and 129), upheld on appeal by order of 16 July 1998, *N v Commission* (C-252/97 P, EU:C:1998:385), and of 19 May 1999, *Connolly v Commission* (T-34/96 and T-163/96, EU:T:1999:102, paragraphs 124, 127 and 128).

<sup>15</sup> Judgments of 13 March 2003, *Pessoa e Costa v Commission* (T-166/02, EU:T:2003:73, paragraph 37), and of 8 July 2008, *Franchet and Byk v Commission* (T-48/05, EU:T:2008:257, paragraph 340).

<sup>16</sup> Judgment of 13 January 2010, *A and G v Commission* (F-124/05 and F-96/06, EU:F:2010:2, paragraph 352).

literature, and goes on to accuse the appellant of a lack of professionalism. The lack of precise identification of the obligation which was allegedly infringed by the appellant leads to the supposition that what is really happening is the sanctioning of copyright infringements.

77. In paragraph 70 of the judgment under appeal, the General Court relies on the official's grade, and the fact that he was in a position of responsibility and that FRA had entrusted him with the task of conducting legal research and analysis and providing advice on policy development. The fact remains that the General Court omits any mention of a specific provision of the Staff Regulations or of FRA's internal legal acts, stating that the fact of not referencing the sources of a document is regarded as being contrary to the requirements laid down by Article 12 of the Staff Regulations. That omission is particularly serious since the professional consequences for the appellant were significant. It should be recalled that the disciplinary proceedings led to the sanction of removal from post, which is only imposed in the most serious cases.<sup>17</sup>

78. In paragraph 72 of the judgment under appeal, the General Court refers to the 'internal rules on publishing and producing research results', without however indicating what the legal force of that document is in FRA's internal legal order. The General Court states that the importance of referencing sources is clearly derived from those rules. However, *the General Court fails to cite the precise wording of the rule in question or explain whether any infringement of those rules is deemed to lead automatically to disciplinary sanctions*. On the basis of the General Court's strict interpretation, that seems to be the case. However, in order for such a document to constitute the legal basis on which such measures may be imposed on an official, its legal force must be clarified in detail, clarification which the General Court manifestly failed to provide.

79. Instead, the General Court seems to rely on an argument based on the nature of the appellant's position, which implies that he would necessarily be aware of the alleged failure to fulfil his obligations under the Staff Regulations. Since *the purpose of that argument seems to be to release the General Court from the duty to specify precisely the origin of that obligation*, I consider that the reasoning contained in paragraphs 53 to 76 of the judgment under appeal is not consistent. The appellant's criticism of the General Court's approach therefore seems to me justified.

80. In the light of the foregoing, it should be noted at this stage of the assessment that *the General Court omitted to state that only an official's failures to comply with his obligations under the Staff Regulations may form the subject of an administrative investigation*. The General Court should have explained that that circumstance does not mean that such an investigation may not extend to cover infringements of intellectual property law, in so far as compliance with those rules falls within an official's obligations, which must however be expressly provided for in the legal instruments which govern the employment relationship between the official and his or her institution.<sup>18</sup>

<sup>17</sup> Pilorge-Vrancken, J., *Le droit de la fonction publique de l'Union européenne*, Bruylant, Namur, 2017, p. 225.

<sup>18</sup> I do not rule out the possibility that copyright protection may be linked to an official's 'obligations under the Staff Regulations', provided such a link is made in a legally correct way, for example, under an agency's internal rules, capable of producing the necessary binding effects. In the present case, I note, first, that the legal force of the 'internal rules on publishing and producing research results' applied by FRA was not established by the General Court and, secondly, that those internal rules merely advise the official of the need to take into account a number of, mainly stylistic, requirements when drafting a document (including that of 'checking and adding references to relevant earlier works'), without however elevating all those requirements to the rank of an 'obligation under the Staff Regulations', failure to comply with which would lead without doubt to disciplinary action. Thirdly, it should be noted that no express reference is made to copyright.

81. The General Court, however, refrained from ruling on the legal nature of the ‘internal rules on publishing and producing research results’ mentioned above, which impose an obligation to reference the sources of a document. Since the General Court does not take into account the requirements of civil service law, in particular, the need for an official to be aware of the extent of his or her obligations towards his or her institution, before being the subject of disciplinary proceedings, its reasoning is in my view vitiated by an error of law.

*(c) The requirement of ‘prima facie evidence’ to support the opening of an administrative investigation*

82. Another legal question that must be examined concerns the requirement of ‘prima facie evidence’ to support the opening of such an investigation. As I stated in my presentation of the regulatory framework for an administrative investigation, there must be *a reasonable suspicion that a breach of discipline has been committed*. The administration must satisfy itself, before instituting an investigation, that it has *information suggesting that the person concerned has breached his or her obligations under the Staff Regulations*. For the reasons given above, a certain amount of discretion should be afforded to the administration at the initial stage of the proceedings.<sup>19</sup> Lastly, it goes without saying that it is necessary to examine in each individual case whether the conditions are met for opening such an investigation.

83. In the present case, the appellant relies on the lack of prima facie evidence to support opening the investigation in respect of him. In that regard, it should be noted, first, that the General Court did not actually rule either on the scope of Article 86(2) of the Staff Regulations, or on the possibility that that provision might exclude any possibility of sanctioning copyright infringements in the context of disciplinary proceedings. If the General Court had taken a position on that point it would have been possible to exclude prima facie evidence to support the opening of an investigation, at least so far as infringement of Austrian copyright law is concerned.

84. As the appellant rightly states, *the concept of ‘prima facie evidence’ logically requires a legal classification*. That is why the General Court should have found that FRA had infringed the rules relating to disciplinary measures, since Article 86(2) of the Staff Regulations does not, in principle, allow the sanctioning of a copyright infringement. The absence of such a finding shows that the General Court failed to examine properly the lawfulness of opening an investigation in respect of the appellant, which constitutes an error of assessment.

85. Secondly, it is clear that the General Court based its examination on the failure to comply with obligations under the Staff Regulations alleged by FRA. Specifically, the General Court referred to Articles 11, 12 and 21 of the Staff Regulations, and concentrated particularly on Article 12 of the Staff Regulations in order to verify whether there was sufficient evidence to conclude that the appellant’s conduct might reflect adversely upon his position. However, as I said above, the General Court failed to examine what the legal force was of the ‘internal rules on publishing and producing research results’ and whether an infringement of those rules was sufficient to support the opening of an investigation in respect of the appellant. Such an approach was especially necessary since Article 12 of the Staff Regulations is drafted in fairly general terms and uses vague legal concepts. The fact that the obligation under the Staff Regulations allegedly infringed by the appellant was not specifically identified shows, in my view, that the General Court did not examine carefully whether the conditions required in order for FRA to open such an investigation were met.

<sup>19</sup> See point 67 of this Opinion.

86. In my view, even recognition that it has some discretion does not exonerate the administration from *the obligation to show that there is sufficient evidence of failure*. Indeed, the more serious the accusation made against an official, the more important it is to satisfy that obligation. Of course, that is especially so in respect of *the prior obligation to define the subject matter of the investigation as precisely as possible*, in view of the risk of damage to the integrity and professional reputation of the official concerned. Respect for the rights of the defence, and for the principle of legal certainty, require that the official be put in a position to be able to understand the accusation made against him or her and to put forward exonerating evidence.<sup>20</sup>

87. Nonetheless, those considerations seem to have been disregarded in the judgment of the General Court. The latter appears instead to have gone along with FRA's position without assessing the facts in the light of the rules relating to disciplinary measures. Consequently, since the General Court failed to meet the requirements with regard to the standard of proof required by Article 86(2) of the Staff Regulations in order to support the opening of an administrative investigation, its reasoning must be regarded as being vitiated by an error of law.

*(d) The obligation to indicate the specific provisions of the Staff Regulations which the official is accused of infringing*

88. Next it is necessary to examine whether the administration is required to indicate, when an administrative investigation is opened, what specific provisions of the Staff Regulations have been infringed. That question is connected with the General Court's statement, in paragraph 106 of the judgment under appeal, that Articles 1 and 2 of Annex IX to the Staff Regulations do not impose such an obligation.

89. However, it seems to me that that argument is not sufficient in itself to exempt the administration from the obligation to inform the official concerned as precisely as possible of the subject matter of the investigation, and in particular the case made against him or her. The answer to that question requires instead that the provisions relating to disciplinary measures be taken into account as a whole. It follows from an examination of those provisions that the administration must have sufficient information suggesting that the person concerned has failed to comply with his or her obligations under the Staff Regulations before opening an investigation. Since the concept of 'prima facie evidence' requires a legal classification, it is logical to suppose that *the administration must also have reached a certain level of certainty as regards the provisions which, in its view, have been infringed*. In other words, it seems inconceivable that the administration would open an investigation without having at least some idea of the provisions applying in the case in point. Of course, that does not preclude the administration having to amend its legal position subsequently on the basis of information obtained during the investigation, but there is nothing to show that that was so in the present case.

90. Similarly, the General Court pointed out, in paragraph 106 of the judgment under appeal, that, according to its case-law, failure to mention expressly, when disciplinary proceedings are initiated, the provisions of the Staff Regulations which are ultimately found to have been infringed does not prejudice the rights of defence of the official or other servant concerned if the objections formulated when the proceedings were initiated enabled him or her to ascertain precisely the provisions of the Staff Regulations which he or she was alleged to have breached.

<sup>20</sup> Tomac, J., 'Régime disciplinaire', in Giacobbo, V., Perillo, E. and Picod, F., *Statut de la Fonction Publique de l'Union Européenne: commentaire article par article*, Bruylant, Namur, 2017, p. 331, which points out the need to observe procedural safeguards in the context of disciplinary proceedings.

The General Court held that the same applied, a fortiori, to decisions to open an investigation. *That case-law does not appear to me to conflict with the considerations set out above relating to the protection of the official's rights of defence*, since it refers to a specific situation, namely that in which, even if the official concerned has not been expressly informed of the infringements that have been alleged against him or her, he or she is at least in a position to understand which provisions are at issue.

91. Unlike the case *Rasmussen v Commission* (T-203/03), which concerned false declarations by an official, rightly considered to be conduct which might reflect adversely upon his position, within the meaning of Article 12 of the Staff Regulations, the present case concerns a situation in which a member of staff has not referenced the sources of a document. In that regard, it should be noted that opinions of the parties are sharply divided over the existence of a binding obligation to that effect. In view of this, it seems to me that the applicability of some of the provisions of the Staff Regulations at issue is not as clear as the General Court claims.

92. In particular, the fact that FRA based the investigation initiated in respect of the appellant on an infringement of the Austrian copyright rules and, at the same time, of various provisions of the Staff Regulations shows that FRA was not sure of the legal classification of the alleged infringements. Assuming that hypothesis is correct, *it seems unreasonable to require the official concerned to make the necessary legal classification himself, when that task is the responsibility of the institution alone*. For those reasons, I consider that the case-law cited by the General Court is not transposable to the present case.

93. It follows from the above that it is necessary to reject the General Court's arguments in support of the theory that the administration is not required to indicate, when an administrative investigation is opened, what specific provisions of the Staff Regulations the administration alleges have been infringed. As I stated in my assessment, *the imposition of such an obligation is essential in order to ensure protection of the rights of defence of the official concerned in the context of disciplinary proceedings, and effective judicial review by the EU Courts*.

94. Although it is necessary to afford the administration a certain amount of discretion, in particular at the initial stage of the proceedings, in view of the possible uncertainty regarding the facts, that does not mean that the administration can be released from *the obligation to take into account the official's interest in not being the subject of unlawful proceedings that might harm his or her professional reputation*. On the contrary, the administration bears a heavy responsibility when it decides whether or not to open an investigation. To permit the administration to conduct such an investigation in respect of an official without him or her knowing exactly what he or she is accused of, and possibly for an indeterminate period, would in my view leave room for arbitrary conduct. The consequence of that would be that the official would be regarded with general mistrust without being able to refute any suspicions. Such an approach seems to me to be incompatible with the procedural safeguards laid down by EU law.

95. Article 3 of Annex IX to the Staff Regulations provides for an official to have the right to be heard at the end of the investigation, which entails, in principle, an opportunity for him or her to be made aware of the full case against him or her and to put forward arguments in his or her defence. However, I consider that, in view of the risks identified above, it would be unacceptable for the official to have to wait until the end of the investigation to find out definitely what infringements he or she is accused of. On the contrary, legal certainty is better ensured if the official concerned is informed of such infringements as soon as and in as much detail as possible. *That assumes logically that he or she should be informed of the relevant provisions of the Staff*

*Regulations at the initial stage of the proceedings.* That is all the more necessary in relatively simple circumstances such as those in the present case, which do not require particular clarification of the facts.

96. Although the General Court seems to agree with those considerations, in paragraph 104 of the judgment under appeal it ultimately relied on invalid arguments to avoid examining the lawfulness of opening the investigation. Specifically, *the General Court refrained from verifying whether FRA had correctly identified the provisions of the Staff Regulations applicable in the present case.* It merely referred to the abovementioned case-law in order to justify the fact that FRA did not mention Article 21 of the Staff Regulations in its decision opening an administrative investigation into the conduct of the appellant, although that case-law was not relevant. Consequently, it must be held, for the purposes of examining the fourth ground of appeal, that its reasoning is vitiated by an error of law.

### *3. Interim conclusion*

97. The General Court's errors of law established in the context of the assessment contained in this Opinion may be summarised as follows. First, the General Court disregarded the fact that, in principle, only failure to fulfil obligations under the Staff Regulations may form the subject of an administrative investigation. Secondly, the General Court disregarded the requirements in respect of the standard of proof required by Article 86(2) of the Staff Regulations in order to support the opening of such an investigation. Thirdly, the General Court disregarded the fact that the administration is required to indicate at that stage of the proceedings the specific provisions of the Staff Regulations which have been infringed by the official concerned.

## **VI. Conclusion**

98. In the light of the foregoing considerations, I propose that the Court of Justice declare the fourth ground of appeal well founded.