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# Staff Matters

## Legal News from Union Syndicale

In a judgment delivered in October 2025, the General Court emphasizes again the importance of the principle of impartiality. There must be sufficient guarantees to exclude any legitimate doubt as to possible bias of the decision-makers and persons involved in proceedings. In the case decided, objective impartiality has not been complied with, also because two persons working in the same unit as the applicant (colleagues) had been in charge of conducting an administrative investigation against the applicant, which later led to the sanction of a warning. The General Court also decided on the question by whom the cost have to be borne which the applicant incurred in disciplinary proceedings that lead to the infliction of a warning. The Court decided that these (lawyer's) cost had to be borne by the institution. The Court finally decided that the applicant receives 5000 Euro in compensation for non-material harm suffered.

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NEWSLETTER  
N° 33

Impartiality – administrative investigation – disciplinary proceedings – warning – reimbursement of costs – damages

**Objective impartiality in administrative investigations and its effect on subsequent disciplinary proceedings**

Case T-1047/23, AF v Council, judgment of 1 October 2025

Case T-159/20 RENV Hamers v Cedefop, judgment of 7 May 2025

### Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.

## Facts of the Case

The applicant, at the time an official at the General Secretariat of the Council, consulted the grade of a colleague via Sysper for reasons unrelated to her duties. She was then suspected of having disclosed that information to a person outside the General Secretariat. The appointing authority opened an administrative investigation into possible breaches of Art. 11, 12 and 17(1) of the Staff Regulations (SR) and other rules on data protection. The applicant's head of unit had been given a mandate to conduct that investigation for which she appointed as investigators two members of the same unit to conduct the administrative investigation. The investigators reported that the applicant had retrieved personal data in Sysper outside her duties and disclosed it externally. The appointing authority conducted disciplinary proceedings without consultation of the Disciplinary Board and concluded by issuing a warning for misuse of Sysper access, while dropping the allegation of unlawful disclosure of data. The request of the applicant to reimburse the lawyers' fees incurred by her in the disciplinary procedure was then refused by her head of unit, because the latter considered Art. 21 of Annex IX SR to be inapplicable.

## Decision of the General Court

By its judgment of 1 October 2025, the General Court (GC) annuls the Council's decision to issue a warning against the applicant. It also annuls the decision to refuse reimbursement of her costs during the disciplinary proceedings, and orders to pay to the applicant the amount of 2413,95 Euro and default interest plus an amount of 5000 Euro as compensation for the non-material damage suffered by the applicant. The GC found that the administrative investigation was not conducted impartially and breached Art. 41(1) of the EU Fundamental Rights Charter (FRC) that establishes the right to good administration. The administration is under an obligation to examine carefully and impartially all the relevant aspects of the case before it and to gather all the factual and legal information necessary to exercise its discretion and to ensure the proper conduct and effectiveness of the procedures that it implements. The requirement of impartiality is intended to guarantee equal treatment and to avoid a situation where there could be a conflict of interest on the part of officials or servants acting on behalf of the institutions.

The requirement of impartiality – as the GC continues – covers all circumstances in which an official or servant who is called upon to decide on an issue must reasonably consider that issue as being of such a nature as to be viewed by third parties as a possible source of impairment of his or her independence in that matter. The GC differentiates between two components of impartiality: (1) subjective





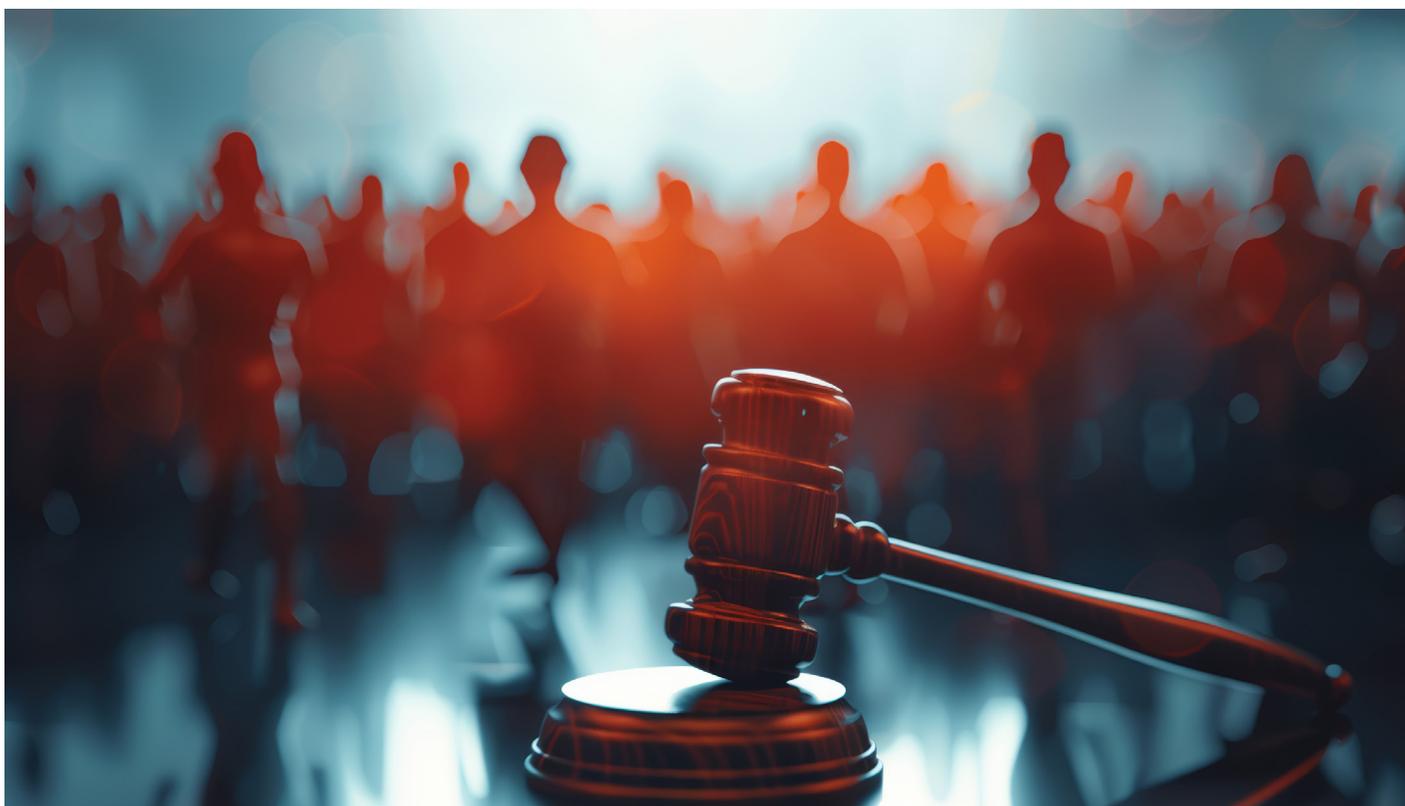
impartiality, by virtue of which no member of the institution concerned may show bias or personal prejudice and (2) objective impartiality, under which that institution must ensure sufficient guarantees to exclude any legitimate doubt as to possible bias. Moreover, in order to show that the organisation of an administrative procedure does not ensure sufficient guarantees to exclude any legitimate doubt as to possible bias, it is not necessary to prove lack of impartiality. It is sufficient for a legitimate doubt to arise which cannot be dispelled.

Particularly, the administrative investigation is to be conducted in an independent and thorough manner, in keeping with the principles of proportionality and confidentiality. Further, the investigators must examine the facts of the case in an impartial manner, taking due account of incriminating and exonerating perspectives. In the case at hands, the GC welcomed, first, the argument of the applicant claiming that the lead investigator was not objectively impartial. Because during the administrative investigation he was the delegate controller for data processing regarding Sysper, also he held the position of data protection coordinator and that, faced with the alleged data breach within his own unit, it could not be ruled out that he had a personal interest in speeding up the procedure and concealing his failure to fulfil obligations. Secondly, the GC welcomed the applicant's argument that the objective impartiality of the two investigators was called in question, because the applicant's head of unit had appointed as investigators two members of the applicant's unit to conduct the administrative investigation. The Court holds that the mere fact that those two investigators had a professional relationship with her before and during the investigation is sufficient to call into question their objective impartiality, without the applicant being required to adduce specific evidence of bias: "objective impartiality is to be assessed independently of the specific conduct of the person concerned".

The Court then examines the relevance of the procedural irregularity for the decision-making process. The annulment of an act stemming from this procedure can be only justified if, without such an irregularity, the outcome

of the procedure might have been different. For this, the GC differentiates between the first stage of an administrative investigation including the drafting of an investigation report and the second stage of disciplinary proceedings proper, initiated on the basis of that investigation report. The investigation and its report of the first stage are such as to influence the decision-making of the appointing authority in the second stage of disciplinary proceedings and are such as to influence the question whether or not to involve the Disciplinary Committee. This influence of the first stage (tainted by an irregularity) upon the second stage of disciplinary decision-making leads the GC to conclude that a different outcome of the procedure cannot be ruled out had the irregularity not taken place. The decision to issue a warning to the applicant therefore had to be annulled.

The second contested decision related to the refusal of the Council to reimburse the costs incurred during the disciplinary proceedings. Art. 21 of Annex IX SR provides that these expenses are to be borne by the official where the disciplinary proceedings result in the imposition of one of the penalties provided for in Art. 9 of Annex IX SR. The GC proceeds to interpret this provision in a way that the institution has to reimburse the cost incurred by the person concerned by the disciplinary proceedings where they either do not result in one of the penalties referred to in Art. 9 of Annex IX SR (which include a warning), or if they only result "in a warning, that is to say, the minimum penalty provided for by the Staff Regulations". Based on this, the GC annulled the decision of the Council by which it refused to reimburse the costs incurred by the applicant during the disciplinary proceedings. The GC then explicitly - exercising its unlimited jurisdiction in disputes of a financial character - determined the amount of costs to be reimbursed (2413,95 Euro) plus default interests from the day of judgment. Finally, the GC awarded an amount *ex aequo et bono* of 5000 Euro as compensation for the non-material harm the applicant had suffered due to anxiety, injustice and uncertainty when the warning was inflicted further to proceedings that suffered from the irregularity (the lack of objective impartiality during the administrative investigation).



## Comments:

1. The core of this judgment is that it confirms the importance of **objective impartiality** under which an institution must ensure sufficient guarantees to exclude any legitimate doubt as to possible bias. Further, an applicant is not required to adduce specific evidence of bias, because the objective impartiality is to be assessed independently of the specific conduct of the person concerned. For general aspects of impartiality, take a look at our StaffMatters newsletter No. 25 (October 2022), and at the soon upcoming newsletter treating the decision on Case Colombani, T-158/23, in the context of appraisal reporting.

2. A staff member does not need to prove lack of impartiality, but it is sufficient for a **legitimate doubt** to arise “which cannot be dispelled”. The fact that the two investigators worked in the same unit as the applicant was enough to find the principle of impartiality breached, amended by the other lack of impartiality which the GC found because the lead investigator has been seen as not having complied with a rule on personal data protection during the time of the investigation, on its side.

3. The context of this case leads to a development in which the existence of objective impartiality might be a function of non-compliance of the person in charge of oversight of the respective administrative investigation – at least where the non-compliance relates to the same subject matter (as was here the area of personal data protection).

4. It is important to note that the disciplinary proceedings proper (which resulted in the infliction of the warning) were not tainted by a mistake themselves, but only by

the objective impartiality detected in the preceding phase of administrative investigation. That phase had the “contagious” effect on the subsequent disciplinary proceedings. When assessing the lawfulness of the sanction in disciplinary proceedings, the **preceding phase** of administrative investigation therefore must be comprised in the assessment.

5. Another case, decided on 7 May 2025 (T-159/20 RENV, *Hamers v Cedefop*), similarly confirmed the importance of *objective impartiality* for the sound decision-making of an institution. Cedefop had failed to comply with the *objective impartiality* because the official who refused to order payment of a claim for compensation which was filed by the applicant had previously acted as a key prosecution witness against her. The GC found this to be an objectively compromising situation that would cause any reasonable observer to doubt the impartiality of the official who refused payment. Cedefop did not put sufficient procedural safeguards in place to remedy or neutralize this conflict, thus violating the right to have one’s affairs handled impartially. Also in that case, the GC annulled the refusal decision, and the institution was ordered to pay 5000 Euro compensating non-material damages.

6. The Court applies a **test of decisiveness** (relevance) of the procedural irregularity for the decision-making process, i.e. holding that “the annulment of an act can be only justified if, without such an irregularity, the outcome of the procedure might have been different”. However, such a test only applies if the procedural irregularity is not an *essential procedural requirement*; because in that

case, there would be no need to test a potential different outcome had the mistake not happened. It remains to be seen if the GC (or ECJ) develops this concept further and differentiates in a consistent way between procedural irregularities that require a hypothetical test of different outcome, and other irregularities that do not require such test, because they are considered to be “**essential procedural requirements**”. As presented in an upcoming newsletter (on Case T-613/23, *James Flett v Commission*) an internal rule of the Commission describing by whom an interview is to be carried out amounted to an essential procedural requirement, while here in Case AF the GC did not even discuss this question.

7. In general, procedural irregularities have a greater impact where the decision-making authority disposes of larger discretion. In such circumstances, procedural safeguards serve as counterbalance for the large discretion. In the present Case AF, the GC starts by emphasizing the right of good administration enshrined in Art. 41(1) FRC, as an important fundamental right, by speaking about the primary law hierarchical value. It would have appeared thus more consistent for the Court to claim that the principle of impartiality (being included in Art. 41 FRC) **is an essential procedural requirement**. This would have meant that the test does not require to check the potential different outcome of the procedure without the irregularity. This being the case, it must be concluded that the GC – so far – does not consider *impartiality* to be an *essential procedural requirement*. But still the GC considered it important enough to annul the decision on the basis that a different outcome cannot be ruled out.

8. On the **reimbursement of costs** incurred by the person that is subject to the disciplinary proceedings: the GC declares that cost incurred by the applicant have to be reimbursed where they only result in a warning pursuant to Art. 3(1) b Annex IX SR. A warning is the minimum penalty provided for by the Staff Regulations. This line of reading the cost reimbursement rules is a positive and welcome clarification for staff that is subject to (only) a warning in disciplinary proceedings: they would be in a position to have their costs (expenses for legal advice / lawyer’s fees) reimbursed.

9. Yet, alternatively, the GC could have reached the same result by applying the second paragraph of Art. 21 Annex IX SR which reads: “However, the appointing authority may decide otherwise in exceptional cases where the burden on the official concerned would be unfair”. The clause could have been applied if the GC considered cost-bearing to be an unfair burden where only a warning had been inflicted. Finally, apart from this, since the GC annuls the sanction of a warning imposed by the Council, it could have connected its decision on the relating cost of the sanction procedure straight away with the decision on the reimbursable cost of the court proceedings.

10. The GC granted an amount of 5000 Euro in **damages** for non-material harm suffered by the applicant. This is justified (and also sometimes attributed by the judges *ex officio*, i.e. even without applicant requesting it) in cases

where the annulment of the administration’s unlawful act *cannot in itself* constitute full compensation for the non-material damage. The following **four categories** can be differentiated, which justify such damages next to the annulment of the act (on details, see *Mader*, EU Civil Service Law (2024), pages 41 ff):

(1) where the unlawful act contains an explicitly negative assessment of the abilities or conduct of the person concerned which is liable to offending him or her (GC – T-571/16, ECLI:EU:T:2019:301, para. 233 - *PT v EIB*)

(2) where feelings of injustice, anxiety, incomprehension or frustration (GC – T-159/20 RENV, ECLI:EU:T:2025:444, para. 73 – *Hamers v CEDEFOP*, and the *AF case*) were caused to the applicant as a result of the appointing authority’s conduct during the pre-litigation stage, as well as the length of time that has elapsed

(3) where the illegality committed is particularly serious

(4) where the annulment of an unlawful act has no practical effect (GC – T-59/17, ECLI:EU:T:2019:140, para. 59 - *L v Parliament*).



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