



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Third Chamber)
17 September 2014

Case F-12/13

CQ
v
European Parliament

(Civil service — Members of the temporary staff — Auxiliary conference interpreters (ACIs) — Article 90 of the CEOS — Psychological harassment — Article 12a of the Staff Regulations — Internal rules for the Advisory Committee on Harassment and its Prevention at the Workplace — Confidentiality of the proceedings of that committee — Manifest errors of assessment)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which CQ seeks annulment of the decision of 8 May 2012 by which the authority empowered to conclude contracts of employment of the European Parliament ('the AECC') found, in accordance with the opinion delivered by its Advisory Committee on Harassment and its Prevention at the Workplace ('the Committee on Harassment' or 'the Committee'), that the applicant had not, while working as a member of the temporary staff, suffered psychological harassment on the part of her Head of Unit.

Held: The action is dismissed. CQ is to bear her own costs and is ordered to pay the costs incurred by the European Parliament.

Summary

1. Officials — Auxiliary conference interpreters — Rules under the Staff Regulations — Auxiliary contract staff

(Conditions of Employment of Other Servants, Arts 3b and 90)

2. Officials — Psychological harassment — Definition — Conduct intended to discredit the person concerned or to impair his working conditions or having that effect — Requirement that conduct must be repetitive — Requirement that conduct must be intentional — Scope — No requirement that harasser should have malicious intent

(Staff Regulations, Art. 12a(3))

3. Officials — Leave — Annual leave — Requests for leave — Time-limit for administration to deal with requests — None

(Staff Regulations, Art. 57, first para.)

4. *Officials — Psychological harassment — Definition — Delay in dealing with requests for annual leave — Not included — Conditions*
(Staff Regulations, Art. 12a(3))

5. *Officials — Rights and obligations — Participation in language courses in the interest of the service — Obligations in the event of absence*

6. *Officials — Obligation of administration to provide assistance — Implementation in relation to psychological harassment — Internal inquiry into alleged psychological harassment — Procedure — Second hearing granted to the party who was the subject of the complaint — Infringement of rights of defence — None*
(Staff Regulations, Art. 12a(3))

1. The engagement by the European Parliament of an auxiliary conference interpreter under Article 90 of the Conditions of Employment of Other Servants automatically confers on that ACI the status of 'member of the contract staff' and, in particular, of contract staff within the meaning of Article 3b of the CEOS, since Article 90 of the CEOS is contained in Chapter 5, entitled 'Special provisions for members of the contract staff referred to in Article 3b' of Title IV of the CEOS.

(see para. 74)

See:

judgment in *Cantisani v Commission*, F-71/10, EU:F:2012:71, para. 60

2. Article 12a(3) of the Staff Regulations defines psychological harassment as 'improper conduct' which, in order to be established, requires that two cumulative conditions be satisfied. The first condition relates to the existence of physical behaviour, spoken or written language, gestures or other acts which take place 'over a period', and are 'repetitive or systematic', which suggests that psychological harassment must be a process that occurs over time and presumes the existence of repetitive or continual conduct which is 'intentional'. The second cumulative condition requires that such physical behaviour, spoken or written language, gestures or other acts have the effect of undermining the personality, dignity or physical or psychological integrity of a person. By virtue of the fact that the adjective 'intentional' applies to the first condition, and not to the second, it is possible to draw a twofold conclusion. First, the physical behaviour, spoken or written language, gestures or other acts referred to by Article 12a(3) of the Staff Regulations must be intentional in character, which excludes from the scope of that provision improper conduct which arises accidentally. Secondly, it is not, on the other hand, a requirement to prove that such physical behaviour, spoken or written language, gestures or other acts were committed with the intention of undermining the personality, dignity or physical or psychological integrity of a person. It is sufficient that such improper conduct, provided that it was committed intentionally, led objectively to such consequences.

As the conduct in question must, under Article 12a(3) of the Staff Regulations, be improper, it follows that the classification of 'harassment' is subject to the condition of its being sufficient, when viewed objectively, to be considered real, in the sense that an impartial and reasonable observer, of normal sensitivity and in the same situation, would consider it to be excessive and open to criticism.

(see paras 76-78)

See:

judgments in *Q v Commission*, F-52/05, EU:F:2008:161, paras 134 and 135, not set aside on this point by the judgment in *Commission v Q*, T-80/09 P, EU:T:2011:347; *Skareby v Commission*, F-42/10, EU:F:2012:64, para. 65; and *Cantisani v Commission*, EU:F:2012:71, para. 89

3. Whereas, under the first paragraph of Article 57 of the Staff Regulations, an official is entitled, per calendar year, to a minimum annual leave of 24 working days and a maximum of 30 working days, that provision does not, however, impose strict time-limits on the administration in dealing with requests for leave by officials and other staff.

(see para. 112)

4. As regards a case of psychological harassment connected with the processing of requests for annual leave, the hierarchy cannot be criticised for any delay in the approval of an application for annual leave where that delay was attributable to another unit and where, in any event, the application was processed in a timely manner. That is the case where the staff member concerned receives confirmation of approval two weeks before the requested period.

As regards a reminder by a Head of Unit concerning the need to submit leave applications at least five working days before the requested leave, such a reminder is not in itself objectionable as it is in the interest of the proper functioning of the service.

With regard to the fact that a Head of Unit tells a staff member that he has to use up his remaining annual leave before the end of his contract as a member of the temporary staff, such a reminder is not in itself objectionable either since, on the contrary, it is good personnel management to ensure that staff declare and use their annual leave to avoid it being carried over to the following years or compensation for such unused leave upon expiry of a contract.

(see paras 116-118)

See:

judgment in *Q v Commission*, EU:F:2008:161, para. 180

5. Enrolment in language courses in the interest of the service, provided during normal working hours, implies that the person concerned should immediately account for any absences from those courses to his hierarchical superior and to the service responsible for such language courses.

Having duly informed his Head of Unit of the reasons for his absence from the language course, the onus is on the official or other staff member concerned to personally undertake the administrative procedures required by the training unit responsible for that language course, to ensure that the unit has made the appropriate changes in his administrative situation and to account for any absences to that unit also.

(see paras 120, 121)

6. As regards an internal inquiry into alleged psychological harassment, conducted according to the European Parliament's internal rules for the Advisory Committee on Harassment and its Prevention at the Workplace, the Committee on Harassment is not bound in its proceedings by strict rules of procedure that would require it to hear the applicant a second time, if that Committee considers it unnecessary to do so. Its role is advisory and its opinion does not constitute an act adversely affecting the applicant. Furthermore, the presumed victim and the presumed harasser are not in the same position before the Committee on Harassment. The presumed harasser must be able to defend himself, as stated in the second paragraph of Article 10 of the internal rules, against the complaint made to the Committee. In those circumstances, the fact that the presumed harasser was given an additional opportunity to answer the allegations made against him cannot demonstrate an infringement of the alleged victim's rights of defence by the Committee on Harassment or an infringement by that Committee of its duty of impartiality.

(see para. 147)