



Reports of Cases

Case T-275/17 Michela Curto v European Parliament

(Civil service — Accredited parliamentary assistants — Article 24 of the Staff Regulations — Request for assistance — Article 12a of the Staff Regulations — Psychological harassment — Advisory Committee dealing with harassment complaints between Accredited Parliamentary Assistants and Members of the European Parliament and its prevention at the workplace — Decision rejecting the request for assistance — Error of assessment — Scope of the duty to provide assistance — Duration of the administrative procedure — Reasonable period — Refusal to disclose reports drawn up by the Advisory Committee)

Summary — Judgment of the General Court (First Chamber), 13 July 2018

- Officials — Obligation of administration to provide assistance — Scope — Former officials or members of staff — Former accredited parliamentary assistants*
(Staff Regulations, Art. 24)
- Officials — Obligation of administration to provide assistance — Implementation in the case of psychological harassment — Bringing of a request for assistance — Duty to act within a reasonable time — Length of the period of time*
(Staff Regulations, Arts 24 and 90(1))
- Officials — Obligation of administration to provide assistance — Scope — Scope — Judicial review — Limits*
(Staff Regulations, Art. 24)
- 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))
- Officials — Psychological harassment — Source of the harassment — Presumed perpetrator of the harassment — Member of the European Parliament — Included*
(Charter of Fundamental Rights of the European Union, Art. 31; Staff Regulations, Art. 12a)
- Officials — Obligation of administration to provide assistance — Scope — Duty of the administration to examine complaints of psychological harassment and inform the complainant of the action to be taken in respect of that complaint — Condition*
(Staff Regulations, Arts 24 and 90(1); Conditions of Employment, Art. 11)

7. *Officials — Obligation of administration to provide assistance — Implementation in the case of psychological harassment — Handling of a request for assistance — Duty to act within a reasonable time — Scope*

(Staff Regulations, Art. 24)

8. *Officials — Obligation of administration to provide assistance — Scope — Obligation of the victim of psychological harassment to first bring an action for compensation before a national court*

(Staff Regulations, Art. 24)

9. *Actions brought by officials — Actions for damages — Annulment of the illegal act in dispute — Non-material harm capable of being separated from the illegality and incapable of being fully compensated for by the annulment*

(Art. 340 TFEU)

1. The duty to provide assistance is not laid down for the benefit of active officials and other members of staff alone, but can also be relied on by former officials or other members of staff.

Thus, in circumstances in which a request for assistance was duly submitted to the Authority empowered to conclude contracts of employment at a time when both the accredited parliamentary assistant and the Member of Parliament concerned were carrying out their respective duties within the institution, that authority is still under a duty to conduct an administrative inquiry in respect of psychological harassment alleged, irrespective of whether, in the meantime, the harassment alleged had ceased as a result of the departure of one or the other of the persons concerned.

(see paras 57, 58)

2. In so far as neither Article 24 nor Article 90(1) of the Staff Regulations specifies a period within which a request for assistance must be submitted, it is appropriate to apply the requirement that such a request must be submitted within a reasonable period following the period during which the acts alleged in the request took place, which cannot, as a rule, exceed five years.

(see para. 61)

3. With regard to the measures to be taken in a situation covered by Article 24 of the Staff Regulations, including the handling of a request for assistance containing allegations concerning psychological harassment within the meaning of Article 12a of the Staff Regulations by a Member of an institution, the administration enjoys a broad discretion — subject to review by the EU judicature — regarding the choice of measures and methods for implementing Article 24 of the Staff Regulations. Review by the EU judicature in that regard is thus limited to assessing whether the institution concerned remained within reasonable bounds and whether it exercised its discretion in a manifestly incorrect way.

The definition of psychological harassment laid down in Article 12a of the Staff Regulations is based on an objective concept which, although based on a contextual classification of the actions and behaviour of third parties, which is not always straightforward, does not, in any event, call for complex assessments to be carried out, such as those that may have to be conducted in respect of economic, scientific or technical concepts, which warrant a margin of discretion being afforded to the administrative body in applying the concept in question. Therefore, where it has been alleged that Article 12a of the Staff Regulations was misapplied, it is necessary to examine whether the Authority

empowered to conclude contracts of employment erred in its assessment of the facts in the light of the definition of psychological harassment laid down in that provision, not whether that error is manifest.

(see paras 74, 75)

4. Psychological harassment is defined as ‘improper conduct’, first, in the form of physical behaviour, spoken or written language, gestures or other acts, which takes place ‘over a period’ and is ‘repetitive or systematic’, suggesting that psychological harassment must be understood as a process that occurs over time and presupposes the existence of repetitive or continual behaviour which is ‘intentional’, as opposed to ‘accidental’. Secondly, in order to fall under that definition, such physical behaviour, spoken or written language, gestures or other acts must have the effect of undermining the personality, dignity or physical or psychological integrity of a person.

Accordingly, it is not necessary to establish that the physical behaviour, spoken or written language, gestures or other acts in question were committed with the intention of undermining the personality, dignity or physical or psychological integrity of a person. In other words, there can be psychological harassment without it being established that there has been any intention on the part of the harasser, by his conduct, to discredit the victim or deliberately impair the latter’s working conditions. It is sufficient that such improper conduct, provided that it was intentional, led objectively to such consequences. Finally, as the conduct in question must, under Article 12a(3) of the Staff Regulations, be improper, it follows that the classification of such conduct as ‘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 the behaviour or act in question to be excessive and open to criticism.

(see paras 76-78)

5. Articles 9(2) and 11(3) of the Parliament’s Rules of Procedure require the Members of that institution to have due regard to the prohibition on psychological harassment laid down in Article 12a of the Staff Regulations, since the ban on such behaviour, imposed in an instrument such as the Staff Regulations, is in fact based on the values and principles laid down in the Treaties and is covered by Article 31 of the Charter of Fundamental Rights, which provides that ‘every worker has the right to working conditions which respect his or her health, safety and dignity’.

(see paras 80, 81)

6. Where a request for assistance for the purposes of Article 24 of the Staff Regulations is made to the Authority empowered to conclude contracts of employment or, as the case may be, the appointing authority of an institution, pursuant to Article 90(1) of the Staff Regulations, it must, by virtue of the duty to provide assistance and when faced with an incident which is incompatible with the good order and smooth running of the service, intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case so as to ascertain the facts and, having done so, to take the appropriate action in full knowledge of the matter. To that end, it is sufficient that the official or other member of staff who is seeking the protection of his institution provide prima facie evidence that the attacks of which he claims to have been the victim actually took place. When such evidence is provided, the institution concerned is then under an obligation to take the necessary measures, in particular to conduct an administrative inquiry, with the cooperation of the complainant, to determine the facts which gave rise to the complaint.

In cases of allegations of harassment, the duty to provide assistance includes, in particular, the duty of the administration to examine seriously, expeditiously and in total confidentiality, the request for assistance in which the harassment is alleged and to inform the complainant of the action to be taken in respect of that complaint.

(see paras 97, 98)

7. As the Staff Regulations make no specific provision as to the period within which an administrative inquiry must be conducted by the administration, inter alia in cases alleging psychological harassment, the Authority empowered to conclude contracts of employment must have due regard in those circumstances for the 'reasonable time' principle. In that regard, the EU institution or body concerned must, when conducting an administrative inquiry, ensure that each measure is adopted within a reasonable time following the previous measure.

In that regard, infringement of the 'reasonable time' principle can justify annulment of a decision taken at the end of an administrative procedure only where the undue delay is likely to have an effect on the actual substance of the decision adopted at the end of the administrative procedure.

(see paras 101, 104)

8. The duty to provide assistance laid down in Article 24 of the Staff Regulations is concerned with the protection of officials and other members of staff, by their institution, against the acts of third parties, not against acts of the institution itself, the review of which falls under other provisions of the Staff Regulations. That being said, for the purposes of that provision, other officials or other members of staff or Members of an EU institution can be regarded as third parties.

Thus, in accordance with the second paragraph of Article 24 of the Staff Regulations, as regards the non-material harm allegedly suffered by another member of staff as a result of the conduct of a Member of an EU institution, that other member of staff must seek in the first place compensation for such damage by bringing an action for compensation before a national court, as it is clear that, pursuant to that provision of the Staff Regulations, it is only when such damage cannot be compensated for that the Authority empowered to conclude contracts of employment can be required jointly and severally to pay compensation for the damage caused to the applicant by the conduct of a 'third party' for the purposes of that provision.

Nonetheless, in accordance with its duty to provide assistance, the Authority empowered to conclude contracts of employment may be required to assist the other member of staff, inter alia financially, in seeking such compensation before a national court.

(see paras 111-113)

9. The annulment of an unlawful act may constitute, in itself, appropriate and, in principle, sufficient compensation for any non-material harm which that act may have caused, unless the applicant shows that he has sustained non-material harm that can be separated from the illegality justifying the annulment and that cannot be compensated for in full by that annulment.

(see para. 114)