Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Second Chamber)

11 July 2013 *

(Civil service — Psychological harassment — Concept of harassment — Request for assistance — Administrative investigation into allegations of harassment — Decision to close the administrative investigation without taking any action — Reasonable period for completing an administrative investigation — Obligation to state reasons for a decision closing an administrative investigation — Scope)

In Case F-46/11,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

Marie Tzirani, a former official of the European Commission, residing in Brussels (Belgium), represented initially by É. Boigelot and S. Woog, and subsequently by É. Boigelot, lawyers,

applicant,

v

European Commission, represented initially by V. Joris and P. Pecho, acting as Agents, and B. Wägenbaur, lawyer, and subsequently by V. Joris, acting as Agent, and B. Wägenbaur, lawyer,

defendant,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

composed of M.I. Rofes i Pujol, President, I. Boruta and K. Bradley (Rapporteur), Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 6 September 2012,

gives the following

Judgment

1 By application lodged at the Registry of the Tribunal on 14 April 2011, the applicant brought the present action, seeking, first, annulment of the decision of the European Commission to take no action on her request for assistance and, secondly, an order that the Commission pay compensation for the damage allegedly suffered.

* Language of the case: French.

Legal context

2 Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') provides:

'1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

…

(c) the obligation of the administration to give reasons for its decisions.

…'

3 Article 1d(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') reads as follows:

'In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

…'

4 Article 12a(3) of the Staff Regulations reads as follows:

'"Psychological harassment" means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.'

5 Article 24 of the Staff Regulations provides:

'The Union shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.'

6 The second paragraph of Article 25 of the Staff Regulations provides:

'Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based.'

7 According to Article 2(2) of Annex IX to the Staff Regulations concerning disciplinary proceedings:

'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.'

Background to the dispute

8 The applicant, who entered the service of the Commission in 1977, was assigned, with effect from 1 July 1991, to the Directorate-General for Personnel and Administration (DG IX), now DG Human Resources and Security ('DG Personnel').

9 In 2003 the applicant applied for the post of Director of Directorate B 'Staff Regulations: policy, management and advice' of DG Personnel ('Directorate B'), and the post of Director of Directorate C 'Social Welfare Policy, Luxembourg Staff, Health, Safety' of the same Directorate-General ('Directorate C'). In both cases, the applicant was placed on the short list but the administration chose other candidates: Mr A for Directorate B and Ms B for Directorate C.

10 Following the applicant's appeals against the appointments of Mr A and Ms B, those appointments were annulled by two judgments of 4 July 2006 (T-45/04 *Tzirani* v *Commission*, and T-88/04 *Tzirani* v *Commission*). Subsequently the applicant challenged before the Tribunal the implementation of the judgment in Case T-45/04 in an appeal which gave rise to the judgment of 22 October 2008 in Case F-46/07 *Tzirani* v *Commission*, by which the Tribunal annulled the new decision appointing Mr A to the post of Director of Directorate B and ordered the Commission to pay damages to the applicant.

11 On 1 January 2003, the applicant was assigned to the Office for the Administration and Payment of Individual Entitlements ('the PMO') as a head of unit. On 1 October 2004, Ms C was appointed Acting Director of the PMO, and, with effect from 16 February 2005, she was appointed Director of the PMO.

12 In emails of 25 May 2005 and 17 February 2006 sent to her hierarchical superior, Ms C, the applicant made complaints against her, contending that her conduct might constitute psychological harassment.

13 On 5 December 2007, the applicant submitted a request for assistance under Article 24 of the Staff Regulations ('the request of 5 December 2007' or 'the request for assistance'). She alleged she had been subjected to acts of psychological harassment and requested that the Commission initiate an administrative investigation in order to examine those acts and take measures to rectify that situation. In addition, the applicant expressed a wish that her request for assistance should be handled by a Commission department other than DG Personnel, the department in which she worked.

14 By email of 18 December 2007, the Secretary-General of the Commission informed the applicant that her request for assistance would be handled by the Investigation and Disciplinary Office of the Commission (IDOC).

15 On 7 February 2008, the applicant suffered an accident at work, following which she was granted long-term sick leave. In February 2009, the applicant was retired without resuming her duties.

16 By email of 6 June 2008 sent to IDOC, the applicant enquired about the progress in the examination of her request for assistance. By note of 9 June 2008, the applicant was informed by the official responsible for conducting the investigation ('the investigator') of the decision of the Secretary-General of the Commission to initiate an administrative investigation. In the same note, the investigator stated that he would conduct the investigation with the technical assistance of IDOC. The investigator stated in that regard that the Secretary-General of the Commission had decided to entrust the investigation to a person outside IDOC in order to avoid any real or apparent conflict of interests. Lastly, the investigator informed the applicant that she would be contacted 'in the coming days' about an interview to enable her to clarify her allegations.

17 By email of 7 November 2008, the investigator apologised to the applicant for the delay in initiating the investigation procedure.

18 On 21 November 2008, and again on 5 March 2009, the applicant complained that she had not received any news concerning her case and asked the investigator for information on progress in the case. On 6 March 2009 the investigator apologised for the delay in 'putting in place the agreed process'.

19 On 9 March 2009, the investigator invited the applicant to give evidence in the administrative investigation, which she did on 19 March 2009.

20 On 30 June 2009, the applicant again asked the investigator in writing for information on her case and requested a second meeting in order to submit new evidence to him. The following day the investigator sent an email to the applicant in which he assumed 'personal responsibility for the considerable length of time the investigation was taking' and admitted that 'despite [his] best efforts' he had not been able to take on … in parallel and at the pace [he] would have wished' the handling of the file on the investigation and the other files connected with his current tasks.

21 The meeting requested by the applicant took place on 29 September 2009.

22 On 8 November 2009, the applicant approached the investigator to request access to the records of the interviews conducted in connection with the administrative investigation. Having received no reply, she repeated that request on 25 November 2009.

23 By email of 27 November 2009, the investigator rejected the request for access to the records of the interviews on grounds of confidentiality both of the administrative investigation and of personal data.

24 Between 1 and 4 December 2009, and again on 22 January 2010, the applicant went through with a member of the IDOC staff the annexes attached to her request for assistance.

25 On 14 February 2010, the applicant sent a new document to the investigator.

26 On 19 February 2010, the applicant lodged a complaint with the European Ombudsman concerning the duration of the investigation.

27 On 23 April 2010, the investigator adopted the final investigation report and proposed to the Secretary-General of the Commission that no action should be taken on the investigation initiated in response to the applicant's request for assistance.

28 It is apparent from the documents in the case that, in the context of the observations which the Commission submitted to the Ombudsman on 15 July 2010, the applicant was informed of the adoption of the final investigation report and of the investigator's conclusions.

29 On 10 August 2010, the applicant received the decision of the Secretary-General of the Commission, dated 7 June 2010, not to take any action on the request for assistance ('the contested decision' or 'the decision of 7 June 2010'). The contested decision was not accompanied by the final investigation report on which it was based.

30 By letter of 25 August 2010, the applicant's counsel criticised the Commission in so far as the decision of 7 June 2010 had taken two months and three days to reach the applicant from the time it was adopted and had not been sent by registered post, nor had any copy of the decision been sent to him, contrary to the applicant's express request in the request for assistance.

31 On 7 September 2010, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the contested decision.

32 On 15 September 2010, the Commission replied to the applicant's counsel that the decision of 7 June 2010 had not been sent to him 'as the result of an administrative error' and that the date to be taken into consideration for calculating the time-limit 'for bringing an appeal' was 10 August 2010.

33 Following a request from the applicant's counsel, by letter of 14 October 2010 the Commission confirmed that the term 'appeal' used in the letter of 15 September 2010 was a 'drafting error', that the complaint had been registered on 7 September 2010 and that this date should 'be taken into consideration for calculating the time-limit for responding' to the complaint.

34 The complaint was rejected by decision of 20 December 2010, notified to the applicant on 4 January 2011.

Forms of order sought and procedure

35 The applicant claims that the Tribunal should:

— order the Commission to produce the file on the administrative investigation and, in particular, the final investigation report and the documents relating thereto and the records of the interviews conducted during the investigation;

— annul the contested decision;

— order the Commission to pay compensation of EUR 10 000, subject to increase in the course of proceedings, for the non-material damage, and to reimburse the costs incurred in the pre-litigation procedure;

— order the Commission to pay all the costs.

36 The Commission contends that the Tribunal should:

— dismiss the action in its entirety as unfounded;

— order the applicant to pay the costs.

37 By letter from the Registry of 31 January 2012, the Tribunal asked the Commission to produce the final investigation report, stating that it was acceptable for it to send a confidential version of the report. The Commission lodged that report at the Registry on 16 February 2012 but did not request confidential treatment for it.

38 By letter of 27 March 2012, the applicant told the Tribunal that the final investigation report sent by the Commission did not contain the annexes showing what investigation activities had been carried out or what interviews had been conducted with the witnesses or the persons concerned, and requested that the Tribunal ask the Commission to send them to her. By letter of 12 July 2012, the Registry informed the parties of the Tribunal's decision not to grant that request.

39 The proposal to settle the dispute amicably which the Tribunal made to the parties was unsuccessful.

Law

A – *The claim for an order that the Commission should produce the file on the administrative investigation*

40 The applicant asked the Tribunal to order the Commission, by way of measures of organisation of procedure, to produce the file on the administrative investigation and, in particular, the final investigation report and the documents relating thereto and the records of the interviews conducted during the investigation.

41 The Tribunal takes the view that in the context of a complaint of psychological harassment it is appropriate, except in special circumstances, to guarantee the confidentiality of witness statements collected, including during the contentious proceedings, since the prospect of a possible removal of that confidentiality at the stage of contentious proceedings may impede the holding of neutral and objective inquiries with the unreserved cooperation of the members of staff called as witnesses (judgment of 12 December 2012 in Case F-43/10 *Cerafogli* v *ECB*, paragraph 222, which is the subject of an appeal before the General Court, Case T-114/13 P). The applicant has not adduced sufficient evidence to warrant the Tribunal's derogating from that precaution in the present case.

42 In view of the above and of the fact that in the context of measures of organisation of procedure the Commission produced the final investigation report, without annexes, which was sent to the applicant and since the Tribunal considers, in any event, that it is sufficiently well informed by the pleadings exchanged and by the parties' answers to the measures of organisation of procedure and to the questions put to them at the hearing, the abovementioned claim should be rejected in so far as the annexes to the final investigation report are concerned.

B – *The claim for annulment of the contested decision*

43 In support of her claim for annulment of the contested decision, the applicant puts forward five pleas: manifest error of assessment and an error of law; infringement of Article 1d of the Staff Regulations; breach of the duty to provide assistance; breach of the duty to have regard for the welfare of officials and the principle of good administration; and, lastly, breach of the obligation to state reasons.

1. *First plea: manifest error of assessment and an error of law*

a) Arguments of the parties

44 The applicant contends that the contested decision contains a manifest error of assessment in so far as the Secretary-General of the Commission, acting in his capacity as the appointing authority, held that the behaviour for which she criticises both her superiors and her colleagues could not be described as psychological harassment and, consequently, took no action on the request for assistance. The applicant also contends that the Commission infringed Article 12a(3) of the Staff Regulations by making the existence of psychological harassment conditional upon the fulfilment of conditions which are not contained in that provision.

45 According to the applicant, all the conditions for establishing psychological harassment are fulfilled. First, she states that the alleged behaviour was intentional, sustained and repeated. Secondly, she claims that she suffered a significant deterioration in her state of health and, in particular, has been suffering since 2006 from depression linked to the psychological harassment she suffered. Thirdly, she criticises the Commission for finding in the decision rejecting the complaint that 'the administrative investigation conducted following the request for assistance … was unable to establish … that the [applicant] was being subjected to discriminatory and degrading treatment', although such a condition

does not appear in the definition of psychological harassment contained in Article 12a(3) of the Staff Regulations, which does not require that behaviour described as harassment must be proved to be discriminatory.

46 As regards the acts alleged in respect of the period between 1999 and 30 September 2004, that is to say, before Ms C took over as Director of the PMO, the applicant asserts that she increasingly encountered a negative approach and unjustified criticism on the part of her superiors and some of her colleagues, who viewed her as a potential competitor for positions of responsibility, although her performance and attitude within the service remained unchanged. That negative approach was reflected in a reduction in the appraisal ratings in her staff reports, in a proposal that she should apply for early retirement without a reduction in her pension rights ('the termination-of-service proposal'), which she regarded as humiliating, and in the fact that the outcomes she proposed for certain problem cases were routinely ignored. According to the applicant, those actions were not merely evidence of simple disagreements with her superiors and some of her colleagues, but constituted psychological harassment.

47 As regards the period from 1 October 2004, the date on which Ms C took over as head of the PMO, to 5 December 2007, the date on which the applicant submitted her request for assistance, the applicant complains that her director, Ms C, systematically and repeatedly excluded her from working parties and meetings on matters within her remit, refused her access to important information, refused to allocate her sufficient staff to carry out the tasks she was required to perform, and cast doubt on her abilities in emails copied to a number of other officials or staff members.

48 The applicant also contends that the contested decision contains an error of law in so far as it rules out the existence of psychological harassment on the ground that 'the investigation also showed that [Ms C] had no malicious intent towards [her] and that [Ms C's] management style was not directed at her specifically'.

49 The Commission contends from the outset that the Tribunal should reject the present plea as inadmissible under Article 35(1)(e) of the Rules of Procedure on the ground that the applicant, having argued in her application that the conditions of Article 12a(3) of the Staff Regulations were fulfilled, makes reference merely to the annexes to the application.

50 As to the substance, the Commission considers that none of the conditions required in order to establish psychological harassment was fulfilled. First, none of the evidence put forward by the applicant is capable of demonstrating the existence of psychological harassment and, secondly, the applicant has not demonstrated that her physical and psychological integrity were undermined.

b) Findings of the Tribunal

51 As a preliminary point, the Tribunal finds that the application summarises, briefly and comprehensibly, the arguments of fact and of law relied on in support of the present plea and states precisely the evidence supporting the arguments it presents, by reference to the various annexes. It follows that, so far as the present plea is concerned, the application complies with Article 35(1)(e) of the Rules of Procedure, so that the plea of inadmissibility raised by the Commission must be rejected.

52 As regards the substance, the Tribunal notes that Article 12a(3) of the Staff Regulations by no means makes malicious intent on the part of the alleged harasser a necessary criterion for classification as psychological harassment (judgments of 9 December 2008 in Case F-52/05 *Q* v *Commission*, paragraph 133, not set aside on this point by the judgment of 12 July 2011 in Case T-80/09 P *Commission* v *Q*, and of 26 February 2013 in Case F-124/10 *Labiri* v *EESC*, paragraph 65).

53 Article 12a(3) of the Staff Regulations defines psychological harassment as 'improper conduct' which requires, in order to be established, 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' and which are 'intentional'. The second condition, separated from the first by the preposition 'and', requires that such physical behaviour, spoken or written language, gestures or other acts have the effect of 'undermin[ing] the personality, dignity or physical or psychological integrity of [a] person' (*Q* v *Commission*, paragraph 134, and *Labiri* v *EESC*, paragraph 66).

54 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. Firstly, 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 reprehensible conduct which arises accidentally. Secondly, it is not, on the other hand, a requirement 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. In other words, there can be psychological harassment within the meaning of Article 12a(3) of the Staff Regulations without the harasser's having intended, by his reprehensible conduct, to discredit the victim or deliberately impair the latter's working conditions. It is sufficient that such reprehensible conduct, provided that it was committed intentionally, led objectively to such consequences (*Q* v *Commission*, paragraph 135, and *Labiri* v *EESC*, paragraph 67).

55 A contrary interpretation of Article 12a(3) of the Staff Regulations, it should be added, would result in depriving the provision of any useful effect, on account of the difficulty of proving the malicious intent of the perpetrator of an act of psychological harassment. While there are cases where such intent can be inferred naturally from the reprehensible conduct of the person responsible for it, the fact is that such cases are rare and that, in the majority of situations, the alleged harasser is careful to avoid any conduct which could indicate his intention to discredit his victim or to impair the latter's working conditions (*Q* v *Commission*, paragraph 136, and *Labiri* v *EESC*, paragraph 68).

56 In its judgment of 16 May 2012 in Case F-42/10 *Skareby* v *Commission*, the Tribunal stated that the classification of harassment is subject to the condition of its being objectively sufficiently 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 (*Skareby* v *Commission*, paragraph 65).

57 In the present case, it is necessary to examine from the outset whether the appointing authority, which is responsible for deciding on the complaint, erred in law by ruling out in the decision rejecting the complaint the existence of psychological harassment on the ground that the applicant had not been subjected to discrimination. In that regard, the Tribunal notes that, according to case-law, if an express decision rejecting a complaint has made significant clarifications concerning the reasons given by the administration in the initial decision, the specific identification of the reasons of the administration must result from a combined reading of those two decisions (*Skareby* v *Commission*, paragraph 53 and the case-law cited).

58 That said, it is apparent from the decision rejecting the complaint that the Commission did not make the existence of discrimination a condition on which recognition of harassment would depend. In response to the applicant's various grounds of complaint, the appointing authority, which was responsible for deciding on the complaint, confined itself to pointing out that it is apparent from the final investigation report that, first, Ms C did not behave in the manner the applicant complains of solely towards the applicant, but that such conduct reflected her general style of managing staff and, secondly, that the applicant was alone in perceiving those actions as constituting psychological harassment, and the mere fact that she did not agree with that style of management was not sufficient to cause it to be classified as psychological harassment.

59 The present ground of complaint, concerning the existence of an error of law, must therefore be rejected as unfounded.

60 Next, it is necessary to examine whether, in the light of the principles recalled above, the Commission committed a manifest error of assessment in deciding that the behaviour of which the applicant complains does not fall within the definition of psychological harassment. To that end, the Tribunal considers it necessary to deal separately with the grounds of complaint which the applicant submits in respect of the period from 1999 until 30 September 2004 ('the first period') and those which relate to the period after 30 September 2004 ('the second period').

The grounds of complaint relating to the first period

61 In the first place, the applicant contends that the effect of the negative rumours which circulated regarding her alleged management weaknesses was a fall in the appraisal ratings in her staff reports for the years 1999 to 2002 as compared with her previous ratings and lower ratings in comparison with the ratings of other colleagues. She also complains that the comparative tables of marks allocated to heads of units were distributed at management meetings. According to the applicant, in view of the fact that she appeared in those tables as the head of unit with the worst performance, distribution of those tables was intended to marginalise and isolate her.

62 So far as the applicant's staff reports are concerned, the Tribunal notes that, according to settled case-law, marks and assessments, even negative ones, contained in a staff report cannot, as such, be regarded as evidence that the report was drawn up for the purpose of psychological harassment (judgment of 2 December 2008 in Case F-15/07 *K* v *Parliament*, paragraph 39).

63 In the present case, the applicant does not put forward any arguments to demonstrate that the quality of her performance was unfairly assessed and, moreover, it is not apparent from the documents in the case that she had lodged any complaints against the staff reports at issue. Also, the mere fact that the applicant had ratings below those of some of her colleagues, even if proven, cannot be regarded as evidence of psychological harassment.

64 In addition, with regard more particularly to the staff report for the period from 1 July 1999 to 30 June 2001, that report contains one 'exceptional' assessment and nine 'superior' assessments and is therefore not lower than the staff report for the preceding period, which contained nine 'superior' assessments and one 'normal' assessment, so the applicant's argument alleging a reduction in her appraisal ratings is untenable in fact. As regards the staff report for the period from 1 July 2001 to 31 December 2002, the mere fact that the applicant obtained 13 merit points out of a total of 20 is not in itself evidence of harassment, in view of the fact that the number of merit points received by the applicant in subsequent years increased consistently. Thus, the applicant obtained 14.5 merit points in 2003, 16 in 2004, and 16.5 in 2005 and 2006.

65 As regards the distribution at management meetings of information concerning the marks obtained by heads of unit, it is apparent from the documents in the case that Ms C herself, in an email of 6 April 2005 to one of the PMO heads of unit, copied to the applicant, described such distribution as 'pointless and inappropriate'. Even if the effect of such distribution were to undermine the personality, dignity or psychological integrity of a person, the applicant points to only two such instances, which occurred between 1999 and 2007, and has therefore not demonstrated that such behaviour took place over a period and was repetitive or systematic.

66 Secondly, the applicant describes as psychological harassment both the termination-of-service proposal made to her by her Director-General at her 2003 staff report meeting and the proposal that she should become an adviser to the new Director of Directorate B, the Director whose appointment she had contested in an action before the European Union Courts.

67 The Tribunal finds that in the context of the present case such proposals cannot be regarded as acts of psychological harassment.

68 As regards the termination-of-service proposal, it is apparent from the final investigation report that the Director-General concerned stated that he had no recollection of making such a proposal to the applicant but, if it proved that this was in fact the case, he had merely mentioned it as one possible option for her. The Tribunal notes in addition that termination of service without loss of pension rights is a mechanism which operates on a voluntary basis and that therefore any proposal to that effect would not in any event be binding on the person to whom it was made. Moreover, if the appointing authority had accepted a request for termination of service from the applicant, she would have had the opportunity to take early retirement without a reduction in her pension rights. Assuming that such a proposal, which would have given the applicant substantial economic benefits, had actually been made, the applicant has not demonstrated in what way that would have been objectively 'humiliating'.

69 As regards the proposal by the Director-General of DG Personnel that she should become an adviser to the new Director of Directorate B, Mr A, it is true that the applicant had applied for the same post of director and that she had contested Mr A's appointment before the European Union Courts. However, since the applicant had on several occasions demonstrated her wish to become a director, any period of service as an adviser to a director would have given her relevant professional experience which she could have put to good use in the future. Such a proposal could therefore be made both in the interests of the service and of the applicant and, since the applicant has not provided the Tribunal with any evidence to show that such a proposal might undermine her personality, dignity or psychological integrity, it must be held that this proposal cannot be regarded as behaviour constituting an act of psychological harassment.

70 Thirdly, the applicant gives as examples of psychological harassment certain disagreements which she had with heads of unit and colleagues. In particular, she claims to have been subjected to inappropriate and humiliating comments on the part of one of the officials on the staff of the Director-General of DG Personnel when an administrative reform was being presented to all the staff in that Directorate-General. She also produces exchanges of emails with the head of another unit within the PMO who accused her of solving her administrative problems 'on the back' of that other unit.

71 The Tribunal finds that it is apparent from the final investigation report that the reaction of the official on the staff of the Director-General of DG Personnel had followed vehement criticism by the applicant of the reform being presented to the staff of their Directorate-General. As regards the abovementioned conflict with the head of another PMO unit, the words used in the emails produced by the applicant, far from being capable of being described as psychological harassment, should be regarded as the manifestation of an administrative conflict between two heads of unit openly criticising each other in front of their hierarchical superior. In that regard, the Tribunal notes that the fact that an official has a difficult, or even conflictual, relationship with colleagues or hierarchical superiors does not by itself constitute proof of psychological harassment (judgment of 16 April 2008 in Case T-486/04 *Michail* v *Commission*, paragraph 61, and judgment of 10 November 2009 in Case F-93/08 *N* v *Parliament*, paragraph 93).

72 Fourthly, the applicant complains that her applications for director's posts had been rejected on several occasions and the Director-General of DG Personnel had expressly advised her not to apply for positions of responsibility.

73 The mere fact that the applicant's applications were not accepted for posts of director cannot be regarded as harassment.

74 Moreover, the fact that the applicant's Director-General had expressed doubts regarding her ability to assume the tasks of director, whilst regarding her as a good head of unit, does not in itself constitute evidence of psychological harassment either. It is not apparent from the documents in the case, nor does the applicant allege, that her Director-General was being offensive or humiliating when he expressed doubts regarding her ability to perform the functions of director. In that regard, the final investigation report contains the words used by that Director-General, who explains that he did not 'bluntly ask [the applicant] not to apply' but 'tried to convey the message (in as neutral a way as possible) that [he was not encouraging] her to apply, because [he considered] she did not have the necessary managerial skills'. The Tribunal notes that even negative comments made to a staff member do not undermine his personality, dignity or physical or psychological integrity, where they are made in measured terms and where it is not apparent from the documents in the case that they are based on unfair accusations devoid of any link with objective facts (see judgment of 24 February 2010 in Case F-2/09 *Menghi* v *ENISA*, paragraph 110).

75 Fifthly, the applicant considers that her systematic exclusion from the activities of her Directorate-General constitutes a specific feature of the psychological harassment she suffered.

76 In particular, the applicant points to the fact that when the new organisation chart for DG Personnel was distributed on 15 October 2002 she was the only head of unit not to have been given, on a temporary basis, the titles of both 'Head of Unit' and 'Acting Head of Unit'. The Tribunal finds that, in view of the broad discretion enjoyed by institutions as regards the organisation of their services, the fact that the applicant was not appointed to assume a temporary function, limited to a period of two months, cannot be considered to be evidence of harassment.

77 The applicant also complains of having been excluded, in November 2002, from the list of participants in a study concerning leave and absence although she had been the main person involved, and again in March 2004, from the list of speakers assigned to inform Commission staff about the new changes under reforms in the area of individual entitlements and family allowances.

78 The Tribunal finds, first, that the applicant only complains in her application that she was excluded from two meetings during the first period, so that her allegation that she had been excluded 'systematically' from the activities of her Directorate-General is not true.

79 Moreover, as regards more particularly participation in the study conducted in November 2002, it is clear from an email of 11 November 2002, sent to the applicant by an assistant to the Director-General of DG Personnel, that the person whom that assistant had first designated to take part in that study was the acting head of unit of the new unit responsible for matters of leave and absence, and that, when that person declined the position, the applicant had been invited to take part in the study. In that regard, the assistant in question had written to the applicant, stating that '[h]er participation … [was] welcome and if [she] wish[ed] to be part of the pilot group she would be even more welcome'. That invitation to be part of the pilot group shows clearly that there was no intention to exclude the applicant from that study.

80 As regards exclusion of the applicant from the list of speakers responsible for informing Commission staff about reform in the area of individual entitlements and family allowances, the choice of speakers for such a presentation fell within the broad discretion of the administration. In view of the very strong opposition to the reform which the applicant had previously voiced, the choice not to invite her to present that reform to all staff does not appear to be open to criticism.

81 Sixthly, the applicant claims that her superiors did not take her ideas or her contributions into consideration in order to resolve certain administrative problems. The applicant's grounds of complaint concern three cases in particular: the Commission's decision to decentralise the management of leave and absence; the management of education allowances and family allowances, where there was a significant backlog because of the prolonged absence of a manager; and the

decision to create new administrative structures, called 'Offices', including the PMO. The applicant contends that she had alerted her superiors to the difficulties and risks which she saw in those three cases and that she had regularly proposed solutions which were systematically ignored or which resulted in negative assessments. In particular, the applicant complained on several occasions about the lack of adequate staff to carry out the new tasks which were being assigned to her unit from time to time.

82 The Tribunal notes that, in view of the broad discretion enjoyed by the institutions in the organisation of their services, neither administrative decisions, even if they are difficult to accept, nor disagreements with the administration over questions relating to the organisation of services, can by themselves prove the existence of psychological harassment. In the present case, this ground of complaint relates in fact to administrative decisions concerning the organisation of services and the allocation of staff to the various services. The mere fact that the administration did not follow the applicant's suggestions or act on her requests for more staff does not in itself demonstrate a failure to listen, let alone psychological harassment, on the part of her superiors, but at most the existence of differences of opinion.

83 In the light of the above analysis, the Tribunal concludes that the acts alleged by the applicant, taken in isolation, do not demonstrate the existence of psychological harassment during the first period.

84 Moreover, if those acts are taken as a whole, the Tribunal considers that, although they may have been perceived as hurtful by the applicant, they do not constitute improper conduct that takes place over a period, is repetitive or systematic and involves acts which are intentional and which objectively have the effect of undermining the personality, dignity or physical or psychological integrity of the person concerned.

85 It follows that the applicant has not demonstrated that the Commission committed a manifest error of assessment in considering, in respect of the first period, that the acts of which she complains do not constitute psychological harassment, taken either in isolation or as a whole. Accordingly, the grounds of complaint relating to that period must be rejected as unfounded.

The grounds of complaint relating to the second period

86 The Tribunal notes from the outset that the contested decision is based on the final investigation report, which reads as follows:

'[Ms C] had her favourites and was not capable of hiding her preferences. [W]itness statements have confirmed that [Ms C] had a tendency to separate colleagues into those she liked and those she did not like.

…

It would appear that [Ms C] has no malicious intent to harm, that she has an "old- school" style whereby hierarchical superiors would adopt an almost paternalistic approach towards their employees, and that she does not realise that those to whom she addresses her remarks may be hurt by them.

It is clear also from the investigation that the approach taken by [Ms C] was not directed at one colleague in particular, but at a whole category of colleagues whom she classified as "bad", to which [the applicant] belonged, but she was not the only one. Several witnesses stated that the same person may be "good" one day and "bad" the next, depending on [Ms C's] frame of mind or on other factors'.

87 It is clear therefore from the wording itself of the final investigation report that the conclusion that the behaviour of Ms C did not constitute harassment of the applicant was based in the first place on the absence of any malicious intent. That conclusion is reiterated in the contested decision, which states that 'the investigation also showed that [Ms C] did not have any malicious intent towards [the applicant]'. That interpretation by the investigator in that report, and of the appointing authority in the contested decision, disregards the fact that there can be psychological harassment within the meaning of Article 12a(3) of the Staff Regulations without the harasser's having intended, by his reprehensible conduct, to discredit the victim or deliberately impair the latter's working conditions (see *Q* v *Commission*, paragraph 144, and *Labiri* v *EESC*, paragraph 68) even where the harasser behaves in the same way towards several officials.

88 The investigator's finding that Ms C did not realise 'that those to whom she addresse[d] her remarks [might] be hurt by them' might be relevant as regards the issue of malicious intent, but by no means demonstrates that Ms C's behaviour was not such as to constitute psychological harassment within the meaning of Article 12a(3) of the Staff Regulations. In any event, the Tribunal notes that this finding is untenable in regard to the applicant, who in the email of 25 May 2005 which she sent to Ms C had clearly informed her that she considered that some of her behaviour 'undermined the dignity and professionalism of case managers' and constituted psychological harassment.

89 It is also apparent from the final investigation report that the investigator considered that Ms C's behaviour did not constitute psychological harassment because it was not specifically directed at the applicant but at an indefinite number of other persons. Such a finding has no basis in law. Far from removing from such conduct the characterisation of harassment, such a finding can only aggravate the infringement of Article 12a of the Staff Regulations, paragraph 1 of which prohibits '[o]fficials [from engaging in] any form of psychological … harassment'. According to the investigator's reasoning, in order to avoid accusations of harassment of one person, the presumed harasser, rather than putting an end to the alleged conduct, could extend his behaviour to include a greater number of persons, which is clearly absurd.

90 Consequently, it must be held that, according to its own wording, the contested decision is based on an interpretation of the concept of psychological harassment which is contrary to Article 12a(3) of the Staff Regulations.

91 In any event, the Tribunal notes that in the assessment of certain facts stated by the applicant, the contested decision contains a manifest error of assessment.

92 In respect of the second period, the applicant complains of a number of aspects of Ms C's behaviour and, in particular, the fact that she uttered demeaning remarks or criticisms at meetings or when sending emails to several persons, and systematically excluded her from activities.

93 In that regard, it is apparent from the final investigation report that Ms C had a tendency 'to indulge in comments on private matters concerning staff, to copy third parties and colleagues in on her exchanges, to make contact directly with managers without going through heads of unit or to favour certain colleagues over others'. Moreover, that report mentions several emails which show that Ms C 'sometimes took decisions without consulting the head of unit concerned'. It is also apparent from the final investigation report that Ms C stated herself when she was being interviewed that she had made negative criticisms of heads of unit under her authority in answers she gave to officials or staff members who had approached the PMO, copying in the heads of unit concerned, but that such behaviour was only 'the expression of her concern to provide rapid and excellent service'.

94 In the first place, the Tribunal observes that some of the abovementioned aspects of Ms C's behaviour were intentional and repetitive and were objectively liable to lead to consequences that discredited the victim or impaired the latter's working conditions.

95 In particular, the applicant complains that Ms C gave 'instructions directly to staff for whom [the applicant] had responsibility without notifying her in advance'. Such behaviour, where it is not justified by particular circumstances (see, to that effect, *Skareby* v *Commission*, paragraph 80), is likely to cause a head of unit to lose credibility in the eyes of his staff and may therefore be classified as psychological harassment. In the present case, the Commission does not give the Tribunal any explanation to demonstrate particular circumstances that might justify the contested behaviour and, in that regard, the investigator merely states, in the final investigation report, that Ms C's management style was 'very direct and involved micro-management'. In those circumstances, the Commission committed a manifest error of assessment in ruling out the possibility that the behaviour for which Ms C was criticised constituted psychological harassment.

96 The applicant contends, moreover, that the Commission committed a manifest error of assessment in so far as it did not regard as psychological harassment the fact that the applicant experienced direct criticism of her abilities, made in public or in exchanges of emails sent to other officials. The Commission replies that, according to case-law, messages whose content comes within the normal context of a hierarchical relationship, such as the messages of which the applicant complains, do not constitute psychological harassment.

97 The Tribunal finds that, although criticism of a subordinate's work must be allowed or else the management of a service would be almost impossible, the case-law relied on by the Commission states that only messages which do not contain any defamatory or malicious wording, and which are sent to the person concerned alone or are copied to others where the interest of the service so justifies come within the normal context of a hierarchical relationship (judgment of 25 October 2007 in Case T-154/05 *Lo Giudice* v *Commission*, paragraphs 104 and 105). The Tribunal finds that the final investigation report merely observes that Ms C had an 'old-school style' whereby hierarchical superiors 'would adopt an almost paternalistic approach towards their employees' but failed to give reasons dictated by the interests of the service which might justify copying messages containing overt criticism of the applicant to several colleagues, including managers working under the applicant's direct control, or to officials who had asked for information from the applicant's service.

98 In the light of the foregoing, the contested decision must be annulled in that, in respect of the second period, it is based on a final investigation report containing a manifest error of assessment, in so far as it does not regard as psychological harassment either the fact that a director regularly gives instructions directly to staff without notifying in advance the head of unit responsible and without any particular circumstances that might justify such conduct, or the fact that a hierarchical superior sends messages containing overt criticism of an official, copying in several colleagues, without there being any reasons dictated by the interests of the service which might justify such a practice.

99 Since the contested decision must be annulled so far as the second period is concerned on grounds of an error of law and a manifest error of assessment, the Tribunal considers that there is no need to analyse the other grounds of complaint put forward by the applicant concerning the second period.

2. *Second plea: infringement of Article 1d of the Staff Regulations*

a) Arguments of the parties

100 The applicant contends that the contested decision infringes Article 1d of the Staff Regulations since she was subjected to discrimination on grounds of her age. In that regard, she contends that the start of the psychological harassment which she suffered coincided with the date on which she became eligible for early retirement.

101 The defendant contends that this plea should be rejected.

b) Findings of the Tribunal

102 The Tribunal finds that the applicant confines herself to mere conjectures without providing any evidence to show that she suffered discrimination on grounds of age.

103 It follows that this plea must be rejected as inadmissible.

3. *Third plea: breach of the duty to provide assistance*

a) Arguments of the parties

104 The applicant claims that the contested decision should be annulled on the ground of infringement by the Commission of its duty to provide assistance.

105 In particular, the applicant criticises the Commission for not adopting urgent measures immediately following the informal approaches she made between 2001 and January 2006 or following the request of 5 December 2007, in which she also asked the Commission, in addition to initiating the investigation, to 'protect [her] both by means of internal directives … and by reimbursement of the costs [incurred]'.

106 The Commission counters by stating that the informal approaches made by the applicant did not reveal evidence of psychological harassment, which explains why no urgent measures were taken following the submission of the request for assistance. In addition, the Commission observes that the applicant was granted long-term sick leave from February 2008 and was not reinstated in her post before she took retirement in February 2009.

b) Findings of the Tribunal

107 The Tribunal notes that Article 24 of the Staff Regulations, which imposes on the institutions a duty to provide assistance to their officials, appears in Title II, 'Rights and obligations of officials'. It follows that, in every situation where the factual conditions are met, that duty to provide assistance is the counterpart of a right of the official concerned under the Staff Regulations (*Commission* v *Q*, paragraph 52 above, paragraph 83).

108 Under the duty to provide assistance laid down in that provision, the administration, when faced with an incident which is incompatible with the good order and tranquillity of the service, must intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to establishing the facts and taking the appropriate action in full knowledge of the facts. To that end, it is sufficient that an official who is seeking the protection of his institution provide at least some evidence of the reality of attacks of which he claims to have been the victim. When such evidence is provided, the institution concerned is under an obligation to take the necessary measures, in particular to carry out an administrative investigation in order to establish the facts which gave rise to the complaint (*Commission* v *Q*, paragraph 84 and the case-law cited), and, where appropriate, by adopting provisional distancing measures in order to protect, as a precautionary measure, the health and safety of the official presumed to be the victim of one of the acts referred to in that provision (*Commission* v *Q*, paragraph 92).

109 However, the plea alleging infringement of the duty to provide assistance due to failure to take precautionary measures cannot usefully be relied upon, in the way the applicant relies on it, in support of a claim for annulment of a decision such as the contested decision to close without taking any action an investigation into acts of harassment to which a member of staff considers she has been subjected.

110 Even if the applicant could demonstrate that by not adopting such measures with the rapidity required by the situation the Commission failed in its duty to provide assistance, such an infringement of Article 24 of the Staff Regulations would not have any effect on the legality of the contested decision (see, concerning the consequences of a potential defect in a decision to suspend an official as regards the legality of the disciplinary measure issued against that official, judgment of 17 July 2012 in Case F-54/11 *BG* v *Ombudsman*, paragraph 83, which is the subject of an appeal before the General Court, Case T-406/12 P; see, also to that effect, *Cerafogli* v *ECB*, paragraph 210), especially since the applicant was not asking the Commission to adopt interim measures to protect the evidence supporting her request for assistance.

111 The present plea must therefore be rejected as ineffective.

4. *Fourth plea: breach of the duty to have regard for the welfare of officials and the principle of good administration*

a) Arguments of the parties

112 The applicant divides this plea into two grounds of complaint: first, the unreasonable duration of the investigation and, second, its conduct.

113 In the first ground of complaint, the applicant contends that the total duration of the investigation, spanning 32 months, is not reasonable and that the fact that the investigator was responsible for other tasks which prevented him from devoting his time to the investigation does not alter that conclusion, since the Commission is required to ensure that the activities involved in the examination of her complaint are properly organised.

114 In the second ground of complaint, the applicant regrets that '[only] ten persons' were interviewed by the Commission during the investigation although she had provided a list of 52 witnesses in her request for assistance. Moreover, she observes that the investigator did not act on her request that he should consult the medical service and acquaint himself with the files of the Commission Ombudsman concerning the existence of complaints concerning Ms C's allegedly inappropriate behaviour towards other officials. Lastly, she considers that the investigation was entrusted to persons having no specific experience with regard to psychological harassment. The applicant contends, in conclusion, that the overall conduct of the investigation shows how little importance the Commission attached to handling her request.

115 The Commission contends that this plea should be rejected.

b) Findings of the Tribunal

116 As regards the first ground of complaint, the Tribunal notes that the obligation to conduct administrative procedures within a reasonable time is a general principle of EU law which is enforced by the European Union Courts and which, moreover, is set forth, as an element of the right to good administration, in Article 41(1) of the Charter (judgments of 11 April 2006 in Case T-394/03 *Angeletti* v *Commission*, paragraph 162; of 6 December 2012 in Case T-390/10 P, *Füller-Tomlinson* v *Parliament*, paragraph 115; and of 11 May 2011 in Case F-53/09 *J* v *Commission*, paragraph 113).

117 Moreover, where the institutions have to deal with an issue as serious as psychological harassment, they have an obligation to respond to an official who makes a request under Article 24 of the Staff Regulations with rapidity and solicitude. The Commission itself states, in paragraph 6.1 of its decision of 26 April 2006 on the Commission policy on protecting the dignity of the person and preventing

psychological harassment and sexual harassment, that 'all requests for assistance by a person complaining of psychological harassment or sexual harassment [must] be dealt with as quickly as possible' ('the decision of 26 April 2006').

118 In the present case, the applicant submitted her request for assistance on 5 December 2007 and the decision to take no action on her request was communicated to her on 10 August 2010, that is to say more than two years and eight months later.

119 Even though the total duration of the procedure appears at first sight to be unusually long, it should be noted that, according to settled case-law, the fact that the appointing authority, in breach of its duty to have regard for the welfare of its officials, has not replied with the necessary rapidity to a request for assistance under Article 24 of the Staff Regulations does not, in itself, affect the lawfulness of the decision to close an investigation into harassment, initiated on the basis of that request for assistance, without taking any action. If such a decision were to be annulled solely on the ground that it was late, the fresh decision that would be required to replace it could not in any case be less late than the annulled decision (judgment of 18 May 2009 in Joined Cases F-138/06 and F-37/08 *Meister* v *OHIM*, paragraph 76).

120 The first ground of complaint is therefore ineffective and must be rejected.

121 As regards the second ground of complaint, relating to the conduct of the investigation, the argument concerning the investigator's lack of experience cannot be accepted. It should be noted first of all that the applicant herself had asked the Secretary-General of the Commission to entrust the investigation to an investigator outside DG Personnel. Moreover, it is apparent from the documents in the case that the investigator received technical cooperation from IDOC throughout the investigation and, in particular, the assistance of an experienced member of IDOC. Lastly, in view of the broad discretion enjoyed by the institutions in the choice of persons to whom they entrust an investigation into acts of harassment, the applicant cannot validly dispute the Commission's choice on the basis of an alleged lack of experience on the part of the investigator and of the member of IDOC who assisted him.

122 As for the argument concerning the limited scope of the investigation, it is apparent from the final investigation report that the investigator states that he made inquiries of and sought information from the Commission Ombudsman and the Commission medical service.

123 As regards the number and choice of witnesses, it is true that the investigator decided to interview only 12 persons besides the applicant, and that some of them were persons whom the applicant had accused of harassing her or of not responding to the harassment to which she considered she had been subjected.

124 However, it should be observed that the authority responsible for an administrative investigation, which is required to investigate the files that are submitted to it in a proportionate manner, has broad discretion with regard to the conduct of the investigation and in particular with regard to assessing the quality and usefulness of the cooperation provided by the witnesses (see *Skareby* v *Commission*, paragraph 38).

125 The Tribunal considers that the investigator had sufficient evidence on the file to be able to determine whether or not the acts of which the applicant complained constitute psychological harassment. In particular, so far as the second period is concerned, the investigator had indeed identified facts capable of demonstrating the existence of psychological harassment even though he had reached the conclusion that no harassment had been established in the present case.

126 In view of those circumstances, the investigator cannot be criticised for breach of his duty to have regard for the welfare of officials or the principle of good administration in deciding to interview a smaller number of witnesses than that proposed by the applicant.

127 Accordingly, the second ground of complaint in the present plea must be rejected as unfounded and the fourth plea must be rejected in its entirety.

5. *Fifth plea: breach of the obligation to state reasons*

a) Arguments of the parties

128 The applicant states that, in the contested decision, the Commission rules out the existence of psychological harassment on the basis of the final investigation report and of witness statements collected during the investigation. However, despite her express requests to that effect, neither the final investigation report nor the records of the interviews with witnesses were sent to her.

129 Consequently, she contends that she was not in a position to assess whether the contested decision was well founded and was obliged to bring the present action in order to ascertain the reasons for that decision.

130 The Commission counters by saying, first, that the contested decision contains sufficient reasons and, secondly, that Article 25 of the Staff Regulations does not contain an obligation to communicate the final report of the administrative investigation or the records of the interviews conducted during that investigation. At the hearing, the Commission stated that an assessment of whether the statement of reasons was exhaustive cannot be made in the abstract but must be made in the light of the particular circumstances of the present case. In that regard, a particular feature of the investigation was that it was carried out with the very close involvement of the applicant, who therefore enjoyed the status of 'privileged witness' and played an active role throughout the procedure. Moreover, according to the Commission, it had the opportunity to supplement the statement of reasons in the decision rejecting the complaint, and it did so.

b) Findings of the Tribunal

Preliminary remarks

131 The Tribunal analysed the first four pleas, taking into consideration the text of the contested decision itself, the decision rejecting the complaint and the final investigation report, which was produced by the Commission and sent to the applicant only in the context of the measures of organisation of procedure decided on by the Tribunal. In her fifth plea, the applicant complains of the absence of a statement of reasons in the contested decision itself. The Tribunal will therefore examine first of all whether the contested decision contained an adequate statement of reasons and then, if not, whether the statement of reasons for the contested decision could have been supplemented at the stage of the decision rejecting the complaint or during the judicial proceedings.

The failure to send the investigation report to the applicant before the action was brought

132 The Tribunal observes that, in the case of a decision closing, without taking any action, an administrative investigation which has been initiated in response to a request for assistance submitted under Article 24 of the Staff Regulations, the second paragraph of Article 25 of the Staff Regulations does not impose any express obligation to send to the complainant either the final report of the administrative investigation or the records of the interviews conducted during that investigation.

133 However, provided the interests of persons against whom proceedings have been brought and of persons who have been witnesses in the investigation are protected, no provision of the Staff Regulations prevents the final investigation report being sent to a third party who has a legitimate interest in knowing details of it, as is the case of a person who has submitted a request under

Article 24 of the Staff Regulations. Furthermore, it is apparent from case-law that institutions have sometimes adopted that solution, by sending complainants the final investigation report, either before the action is brought, by annexing it to the final decision taken on the complaint (*Lo Giudice* v *Commission*, paragraph 163, and *Cerafogli* v *ECB*, paragraph 108), or, as in the present case, pursuant to a measure of organisation of procedure decided on by the Tribunal.

134 In any event, the Tribunal notes that the subject-matter of the present plea is whether the contested decision complies with the requirements of the second paragraph of Article 25 of the Staff Regulations. Consequently, it is not necessary for the Tribunal, in the context of the present plea, to settle the question of whether the Commission is under an obligation to send the final investigation report and the records of witness statements to the applicant. It is quite possible that a decision to close an investigation into acts of harassment without taking any action may contain sufficient reasons without recourse to other external evidence.

135 It follows that the ground of complaint alleging failure to send the final investigation report, and the records of interviews as an annex to that report, must be rejected as ineffective.

The statement of reasons for the contested decision

136 As regards the obligation to state the grounds on which a decision adversely affecting an official is based, the Tribunal notes that the guarantees afforded by the European Union legal order in administrative proceedings include, in particular, the principle of sound administration, enshrined in Article 41 of the Charter (see judgment of 27 September 2012 in Case T-387/09 *Applied Microengineering* v *Commission*, paragraph 76), which includes, inter alia, 'the obligation of the administration to give reasons for its decisions'.

137 Moreover, the obligation to state the grounds on which a decision adversely affecting an official is based constitutes an essential principle of EU law which may be derogated from only for compelling reasons (see judgments of 29 September 2005 in Case T-218/02 *Napoli Buzzanca* v *Commission*, paragraph 57 and the case-law cited, and of 8 September 2009 in Case T-404/06 P *ETF* v *Landgren*, paragraph 148 and the case-law cited).

138 It is settled case-law that the statement of reasons required by Article 296 TFEU must show clearly and unequivocally the reasoning of the authority which adopted the contested measure (see, to that effect, judgment of 14 December 2004 in Case C-210/03 *Swedish Match*, paragraph 63).

139 The purpose of the obligation to state the grounds on which any decision adversely affecting an official is based, laid down in the second paragraph of Article 25 of Staff Regulations, which merely reiterates in the specific context of relations between the institutions and their staff the general obligation laid down in Article 296 TFEU, is to provide the official concerned with sufficient information to assess whether the decision is well founded or subject to a defect enabling its legality to be challenged and to enable the European Union Courts to review the legality of the contested decision (*Lo Giudice* v *Commission*, paragraph 160).

140 Moreover, the case-law relating to the second paragraph of Article 25 of the Staff Regulations states that the extent of the obligation to state the grounds on which a decision adversely affecting an official is based must be assessed having regard not only to the wording of the decision at issue but also on the basis of the specific circumstances of that decision, and to the legal rules governing the matter in question (*Lo Giudice* v *Commission*, paragraph 163, and *Skareby* v *Commission*, paragraph 74) and that the statement of reasons must in principle be notified to the person concerned at the same time as the decision adversely affecting him (judgment of 26 November 1981 in Case 195/80 *Michel* v *Parliament*, paragraph 22).

141 A narrow interpretation of the obligation imposed by the second paragraph of Article 25 of the Staff Regulations is all the more necessary where the decision adversely affecting the official, as in the present case, is a decision of the appointing authority to close, without taking any action, an investigation originating from a request for assistance concerning allegations of psychological harassment.

142 Unlike most administrative measures which may adversely affect an official, a decision concerning a request for assistance is adopted in a specific factual context. First, such a context may already have lasted for a number of months, or indeed, as in the present case, a number of years. Furthermore, as the Tribunal noted in paragraph 32 of *Skareby* v *Commission*, 'psychological harassment … may have extremely destructive effects on a person's state of health'. Also, a situation of harassment, if it is established, does not mainly affect the financial interests or the career of the official, situations which the institution can rapidly rectify by the adoption of a measure or the payment of a sum of money to the person concerned, but it damages the personality, dignity or physical or psychological integrity of that person, damage which cannot be remedied entirely by financial compensation. Lastly, whether or not the allegations of harassment are well founded, they are perceived as such by the complainant and, under the duty to have regard for the welfare of officials, the institution is required to state the reasons for its rejection of a request for assistance as fully as possible, without the complainant also having to wait for the response to a complaint in order to ascertain those reasons, a response which the institution might even decide not to give.

143 The Tribunal considers that the need to give reasons for the contested decision in full was all the more pressing in the circumstances of the present case where, according to the statements made by the applicant at the hearing, the service responsible for conducting investigations into harassment was regarded as being 'the Commission's first defence lawyer'. In that connection, in answer to a question which the Tribunal put at the hearing, the Commission stated that, during the four years that the member of the IDOC staff who assisted the investigator in the present case worked for IDOC that service had never established the existence of psychological harassment, even though it had initiated between five and ten investigations each year.

144 It is in the light of those principles and circumstances that the Tribunal must assess whether the statement of reasons for the contested decision complies with the requirements of the second paragraph of Article 25 of the Staff Regulations.

145 In a very short introduction, the contested decision states that it is apparent from the final investigation report that the applicant 'had the opportunity throughout the investigation to contribute to its conduct' and that she 'was informed in a transparent manner of its progress'. The decision goes on to analyse the first and second periods separately.

146 As regards the first period, the contested decision states that the final investigation report refers to 'a series of differences of opinion' on specific matters between the applicant on the one hand, and her superiors and some of her colleagues on the other hand. However, the contested decision highlights the fact that those differences 'which related exclusively to aspects of work' were always addressed at management meetings or in formal notes. Moreover, according to the contested decision, 'the investigation … did not reveal [any] animosity' but rather 'a certain sympathy from [her] former colleagues' towards the applicant, nor did it establish the existence of any rumours concerning lack of skills or management weaknesses on her part. That decision also mentions that the appraisal ratings awarded to the applicant in respect of the period 1 July 1999 to 30 June 2001 and the period 1 July 2001 to 31 December 2002 were calculated in full compliance with the procedures and did not represent a downgrading compared with past appraisals. The contested decision also notes that neither a negative appraisal, even if repeated, nor 'managerial decisions that are difficult to accept' constitute harassment in themselves.

147 The contested decision finds, lastly, that '[on] the basis of the documents … produced [by the applicant], the witness statements collected during the investigation and the subsequent analysis, it is not apparent that the conduct of the persons whom [the applicant] is proceeding against meets the criteria of Article 12a of the Staff Regulations …, taken either in isolation or as a whole, for classification as "systematic harassment"'.

148 Taking that reasoning into account, the Tribunal considers that the contested decision addresses in a brief but appropriate manner all the grounds of complaint raised by the applicant in respect of the period concerned, and provides sufficient information for her to assess whether the decision is well founded and for the Tribunal to exercise its power of review.

149 Accordingly, it must be held that, in respect of the first period, the statement of reasons for the decision complies with the requirements of the second paragraph of Article 25 of Staff Regulations, as interpreted by case-law, with the result that the present plea is unfounded in so far as it relates to that period.

150 However, so far as the second period is concerned, the contested decision merely states that '[t]he investigation has shown that [Ms C] had a particular management style which sometimes displeased some of her colleagues and could occasionally be perceived as hurtful or offensive, and that [the applicant] had occasion to express criticism in that regard, and that there was disagreement between [the applicant] and her director over certain management decisions[; h]owever, the investigation also showed that [Ms C] did not have any malicious intent [towards the applicant] and that her management style was not directed at [the applicant] specifically'. The contested decision concludes from this that 'it is not apparent from the investigation that [Ms C's] behaviour objectively undermined the dignity, personality or integrity [of the applicant; i]t is not apparent from the documents in the case, the witness statements and the detailed analysis of the investigation conducted independently and at length that there was improper conduct [towards the applicant] on the part of a [colleague] or a group of colleague[s] that might undermine [her] personality, dignity or physical or psychological integrity'.

151 In that regard, the Tribunal finds that the contested decision does not deal with any of the grounds of complaint raised by the applicant in her request but refers as regards its factual basis to the final investigation report, which was sent to the applicant only after a measure of organisation of procedure was decided on by the Tribunal in the context of the present case.

152 Although case-law accepts a statement of reasons in the form of a reference to a report or an opinion, which itself states reasons and is communicated to the person concerned (see *Lo Giudice* v *Commission*, paragraphs 163 and 164, and *Cerafogli* v *ECB*, paragraph 108 and the case-law cited), it is necessary for such a report or opinion to actually be communicated to that person together with the act adversely affecting that person, and this was not done in the present case.

153 It was therefore impossible for the applicant, on the basis of the contested decision alone, to challenge the factual evidence used by the investigator or the conclusions he drew from it, so that, as regards its factual basis, the statement of reasons for the contested decision does not comply with the requirements of the second paragraph of Article 25 of the Staff Regulations.

154 It must therefore be held that, so far as the second period is concerned, the contested decision provides the applicant with only the beginnings of a statement of reasons, which in itself does not enable the appointing authority to fulfil its obligation under the second paragraph of Article 25 of the Staff Regulations.

155 The Tribunal notes, however, that case-law accepts, in the case of certain disputes between the institutions and their staff, that the obligation to state reasons provided for in the second paragraph of Article 25 of the Staff Regulations may be relaxed.

156 It is therefore necessary to examine whether, as the Commission contended in its defence and at the hearing, these case-law principles should be applied in the present case.

– The possibility of supplementing the statement of reasons for the contested decision in the decision rejecting the complaint

157 According to the Commission, the decision rejecting the complaint provided the applicant with detailed reasoning, which enabled her to assess whether it was appropriate to bring an action against the contested decision and the Tribunal to review the legality of that decision.

158 The Tribunal notes that, according to the wording of the second paragraph of Article 25 of the Staff Regulations, it is the decision adversely affecting the official, and not a subsequent administrative measure, which must state the grounds on which it is based.

159 Admittedly, according to case-law, the appointing authority is bound by an obligation to give reasons, at the very least when rejecting a complaint and, in particular, the administration may remedy the possible lack of reasoning of a decision adversely affecting an official by appropriate reasoning provided at the stage of the response to the complaint, as the reasons for that decision are deemed to coincide with the reasons for the decision against which the complaint was made (judgments of 19 March 1998 in Case T-74/96 *Tzoanos* v *Commission*, paragraph 268; of 1 April 2009 in Case T-385/04 *Valero Jordana* v *Commission*, paragraph 118; and of 26 May 2011 in Case F-40/10 *Lebedef* v *Commission*, paragraph 38). Moreover, according to case-law, the administration is permitted to remedy an inadequate statement of grounds by additional information provided, even during the proceedings, if the official concerned already had at his disposal before bringing his action information constituting the beginnings of a statement of reasons (*Skareby* v *Commission*, paragraph 75 and the case-law cited).

160 However, that interpretation in case-law of the second paragraph of Article 25 of the Staff Regulations was originally devised in the context of disputes concerning the legality of decisions not to promote, in which the European Union Courts decided that the appointing authority was not obliged to give reasons for promotion decisions in so far as they affected candidates who had not been promoted, as a statement of those reasons might harm those candidates (judgments of 6 May 1969 in Case 21/68 *Huybrechts* v *Commission*, paragraph 19; of 13 July 1972 in Case 90/71 *Bernardi* v *Parliament*, paragraph 15; and of 30 October 1974 in Case 188/73 *Grassi* v *Council*, paragraphs 11 to 17).

161 That case-law has subsequently been extended to decisions rejecting candidatures or excluding candidates from a competition (see, for example, judgments of 12 February 1992 in Case T-52/90 *Volger* v *Parliament*, paragraph 36, and of 30 November 1993 in Case T-78/92 *Perakis* v *Parliament*, paragraphs 50 to 52), and then applied to certain other categories of dispute such as, for example, disputes concerning the using up of annual leave (see *Lebedef* v *Commission*).

162 Such rules of interpretation allow, in certain circumstances, an appropriate balance to be struck between the obligation imposed by the second paragraph of Article 25 of the Staff Regulations to state the grounds on which a decision adversely affecting an official is based and other legitimate requirements, such as those of good administration or protection of the rights of third parties.

163 None the less, the Tribunal finds that, since Article 41(2)(c) of the Charter establishes the right to be given reasons for administrative decisions as a fundamental general principle of EU law, any exception to the rule laid down in the second paragraph of Article 25 of the Staff Regulations, which states that the grounds must necessarily be either contained in the decision adversely affecting the official itself or be communicated at the same time as that decision, must be interpreted restrictively and be objectively justified by the circumstances in which the decision adversely affecting the official is adopted.

164 Moreover, in the specific context of an investigation initiated on the basis of a request for assistance under Article 24 of the Staff Regulations to establish the reality of the acts of harassment to which a member of staff considers he has been subjected, it is necessary to take into account the obligation incumbent on the institution to respond to the official who has made such a request with the rapidity and solicitude required in the handling of such a serious situation (see, to that effect, *Lo Giudice* v *Commission*, paragraph 136).

165 Accordingly, in such a context, the obligation to state reasons laid down in the second paragraph of Article 25 of the Staff Regulations must be interpreted strictly and a decision which in itself provides the applicant with only the beginnings of a statement of reasons does not meet the requirements imposed by that provision. A contrary solution would have the effect of requiring an official who has made a request for assistance under Article 24 of the Staff Regulations in respect of acts of psychological harassment to lodge a staff complaint in order to ascertain the grounds for the decision to close the administrative investigation without taking action which complies with the requirements of the second paragraph of Article 25 of the Staff Regulations. As the Commission acknowledged at the hearing, the purpose of a complaint is not to ascertain the grounds for a decision adversely affecting an official but to challenge its merits. To permit the administration not to communicate the grounds for its decision on a request for assistance would also be manifestly incompatible with the obligation incumbent on institutions to act with the rapidity and solicitude required in a situation as serious as that of psychological harassment and with the obligation to handle requests for assistance in a case of psychological harassment or sexual harassment 'as quickly as possible', the obligation which the Commission assumed under the decision of 26 April 2006.

166 It follows that, in the case of a decision closing an investigation initiated in response to a request for assistance under Article 24 of the Staff Regulations in respect of acts of psychological harassment, institutions cannot validly provide the person concerned with all the grounds for the first time in the decision rejecting a complaint without infringing their obligation to state reasons under the second paragraph of Article 25 of the Staff Regulations.

167 Such a solution is, however, without prejudice to the possibility that institutions may, at the time of the decision rejecting the complaint, make significant clarifications concerning the reasons given by the administration, or that the Tribunal may take into consideration those clarifications when examining a plea challenging the legality of the decision (see, to that effect, *Skareby* v *Commission*, paragraph 53).

– Taking into account the circumstances in which the contested decision was adopted

168 The Commission contends that the applicant played an active role in the investigation procedure, that she had the opportunity to contribute to it by submitting documents and observations and that she was given information on the progress of the investigation.

169 In that regard, in order to decide whether the requirement to state reasons laid down in the Staff Regulations has been met, it is necessary to take into account not only the documents by which the decision is communicated, but also the circumstances in which it was taken and brought to the notice of the person concerned (judgment of 30 November 2010 in Case F-97/09 *Taillard* v *Parliament*, paragraph 33). In the present case, it is necessary both to take into consideration the applicant's participation in the investigation and to examine whether, at the time the contested decision was adopted, the applicant was already in possession of the information on which that decision was based (see, to that effect, judgment of 8 July 1998 in Case T-130/96 *Aquilino* v *Council*, paragraph 44 and the case-law cited).

170 It is apparent from the wording itself of the contested decision that it is based on the final investigation report, which was sent to the applicant only during the procedure before the Tribunal. Accordingly, in the absence of any indication to the contrary in the contested decision, the applicant would not know to what extent the information she had provided during the investigation had been taken into

consideration by the investigator, or whether the contested decision actually corresponded to the results of the investigation. It follows that the Commission cannot justify the initial absence of a statement of reasons for the contested decision by stating that the latter was based on information known to the applicant.

171 The opportunity given to the applicant to contribute to the proper conduct of the investigation would appear to comply with respect for the principle of good administration. However, such participation is not in itself proof that the applicant had thus been informed of the reasons which led the Commission to reject her request for assistance. Even assuming that the applicant had received the relevant information in the course of the investigation procedure, which the Commission has not demonstrated, the applicant could presume that this information had been rendered obsolete by the grounds on which the contested decision was founded.

172 As for the information on the progress of the investigation provided to the applicant, the Commission has not demonstrated that, besides the offer of apologies for the delays in conducting various aspects of the investigation, such information concerned the grounds on which it subsequently based its rejection of the applicant's request for assistance.

173 In the light of all the foregoing, it must be held that the contested decision does not give adequate reasons why the Commission took no action on the applicant's request for assistance in respect of the second period, and that decision must be annulled in so far as that period is concerned.

C – *The claim for damages*

1. *Arguments of the parties*

174 The applicant claims compensation for material and non-material damage due to the psychological harassment she suffered and the unlawful acts committed by the Commission in rejecting her request for assistance.

175 In so far as material damage is concerned, the merits of the applicant's claim for damages must be split into three parts.

176 First, the applicant maintains that the psychological harassment she suffered blighted her career and her reputation in so far as it had the effect of undermining her physical and mental health. Secondly, the applicant contends that the breach of Article 24 of the Staff Regulations, in particular the failure to adopt interim protective measures, such as distancing her from her alleged harasser, following her request for assistance caused her damage. Thirdly, she claims compensation for the damage she alleges she suffered because the Commission infringed the principle of good administration and the duty to have regard for the welfare of officials and because of the Commission's unreasonable delay in handling her case.

177 The damage suffered would be repaired in part, according to the applicant, if the Commission were to pay the fees and expenses of her advisers in respect of the pre-litigation procedure and proceedings before the Tribunal.

178 In so far as compensation for non-material damage is concerned, the applicant considers that such damage stems from the Commission's breach of the duty to have regard for her welfare when handling her request for assistance, and she assesses that damage at EUR 10 000.

179 The Commission counters by saying that, as psychological harassment has not been proved, the applicant has not suffered any material or non-material damage and that therefore the claim for damages should not be granted. It adds that, in any event, according to settled case-law it is not for the defendant to bear the costs incurred by the applicant during the pre-litigation phase.

2. *Findings of the Tribunal*

180 It is clear from well-established case-law that, in disputes between the institutions and their officials, a right to compensation is recognised where three cumulative conditions are met, namely that the allegedly wrongful act committed by the institutions was illegal, actual harm was suffered and there is a causal link between the wrongful act and the damage claimed (*Commission* v *Q*, paragraph 42 and the case-law cited). The fact that one of those three conditions has not been satisfied is a sufficient basis on which to dismiss an action for damages (see order of 16 March 2011 in Case F-21/10 *Marcuccio* v *Commission*, paragraphs 22 and 23 and the case-law cited).

181 With regard to the third condition to which liability of the institutions is subject, the damage for which compensation is sought must be actual and certain, which it is for the applicant to prove (judgment of 13 June 2012 in Case F-63/10 *BL* v *Commission*, paragraph 98).

182 The applicant makes no reference in her pleadings to any document or file that would prove the reality or extent of the material damage alleged, for which she gives no figures, merely stating that such damage would be repaired in part if the Commission were to pay the fees and expenses of her advisers in respect of the pre-litigation procedure and the proceedings before the Tribunal. Moreover, the application does not offer any evidence in support in that respect. Under Article 35(1)(e) of the Rules of Procedure, the application must contain the evidence needed in order to demonstrate the reality and extent of the damage.

183 In the absence of such evidence, it must be concluded that the applicant has not established the reality and extent of the alleged material damage. The applicant's claim for compensation for material damage must therefore be rejected, without its being necessary for the Tribunal to rule on the existence of the other conditions.

184 The applicant considers that non-material damage results from the unreasonable duration of the investigation and from the Commission's failure to have regard for her welfare when dealing with the case.

185 The Tribunal notes that the applicant submitted her request for assistance on 5 December 2007 and that the contested decision was communicated to her on 10 August 2010, that is to say more than two years and eight months later. In the light of the circumstances of the present case, and even considering the length of the request for assistance and the fact that the applicant, on several occasions, requested further investigation, such a period of time cannot in principle be described as reasonable.

186 It is therefore necessary to examine whether the various arguments put forward by the Commission to justify the duration of the investigation procedure are capable of calling that conclusion into question.

187 It is apparent from the documents in the case that six months elapsed between the date on which the request for assistance was submitted and the decision to initiate an administrative investigation and entrust it to an investigator outside DG Personnel, a decision which was adopted on 9 June 2008. That period was therefore two months longer than the period of four months laid down in Article 90(1) of the Staff Regulations for the establishment of an implicit decision rejecting a request.

188 However, according to case-law concerning requests for assistance under Article 24 of the Staff Regulations, it is not excluded that objective reasons, which might in particular relate to the organisational requirements of the investigation, may justify a longer period before the initiation of that investigation (*Commission* v *Q*, paragraph 105). In the present case, in view of the, quite correct, decision to entrust the investigation to a person not working within DG Personnel and the length of the request for assistance, which consists of some one thousand pages, that delay on the part of the Commission cannot be considered unreasonable.

189 On the other hand, in respect of the period between 9 June 2008 and 9 March 2009, the date on which the investigator invited the applicant to give evidence in the administrative investigation, the Commission acknowledges that 'no formal investigative act was undertaken', a situation for which the investigator apologised to the applicant on several occasions. The Commission justifies that delay by reference to the investigator's workload owing to his recent appointment as Director. None the less, that consideration does not justify the fact that during the abovementioned nine months the investigation ground to a halt. Although the investigator was not in a position to carry out his duties in connection with the investigation, the Commission should have appointed another investigator or, in any event, organised his activities so that the processing of the applicant's request was not delayed for such a significant length of time.

190 In respect of the period from 9 March 2009 to 23 April 2010, the date on which the investigator made his report to the Secretary-General of the Commission, the Commission justifies the duration of the procedure by the complexity of the investigation and the 'large number' of persons to be interviewed, including a number of former officials who had left Belgium. Although it is apparent from the final investigation report that the Commission only interviewed 12 persons, of whom only 3 were retired, it does not appear that the duration of that phase is unreasonable in view of the overall complexity of the investigation.

191 Lastly, the Secretary-General of the Commission adopted the contested decision on 7 June 2010. However, as the Commission itself explained in the letter of 15 September 2010 sent to the applicant's adviser, 'as the result of an administrative error' the decision was not sent to the applicant until 10 August 2010.

192 It follows that, in an investigation procedure of a total duration of 32 months, no less than 11 months elapsed — between 9 June 2008 and 9 March 2009 and between 7 June 2010 and 10 August 2010 — during which no action was taken, and the Commission is unable to put forward any valid justification for that failure to act. Merely citing the investigator's workload or an administrative error does not justify the duration of the investigation.

193 The duration of the investigation procedure cannot therefore be considered to be reasonable nor can the conduct of the Commission be considered to be in accordance with its duty to have regard for the applicant's welfare.

194 In those circumstances, the non-material damage suffered by the applicant cannot be compensated for entirely by annulment of the contested decision. By reason of the partial annulment of the contested decision, the applicant is again in a position of waiting for the final outcome of the procedure initiated under Article 24 of the Staff Regulations following her request of 5 December 2007. Such prolongation of the situation of expectation and uncertainty, caused by the unlawfulness of the contested decision, constitutes non-material damage.

195 For the reasons set out above, the Tribunal considers that the claim for compensation for the non-material damage linked to the excessive duration of the procedure and breach of the duty to have regard for the welfare of officials is well founded and orders the Commission to pay the applicant an amount assessed *ex aequo et bono* at EUR 6 000.

Costs

196 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title II of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that that party is not to be ordered to pay any.

197 It follows from the grounds of this judgment that the Commission is for the most part the unsuccessful party. Moreover, in the form of order sought, the applicant expressly applied for the Commission to pay the costs. As the circumstances of the present case do not justify the application of Article 87(2) of the Rules of Procedure, the Commission must bear its own costs and be ordered to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

hereby:

1. **Annuls the decision of the European Commission of 7 June 2010 in so far as it takes no action on Ms Tzirani's request for assistance in respect of acts of psychological harassment allegedly suffered from 1 October 2004;**

2. **Orders the European Commission to pay Ms Tzirani the sum of EUR 6 000;**

3. **Dismisses the action as to the remainder;**

4. **Declares that the European Commission is to bear its own costs and orders it to pay the costs incurred by Ms Tzirani.**

Rofes i Pujol Boruta Bradley

Delivered in open court in Luxembourg on 11 July 2013.

W. Hakenberg
Registrar

M.I. Rofes i Pujol
President