



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

14 July 2021 *

(Civil service – ECDC staff – Psychological harassment – Article 12a of the Staff Regulations – Request for assistance – Scope of the duty to provide assistance – Article 24 of the Staff Regulations – Resignation of the perpetrator of the behaviour complained of – Failure to open a disciplinary procedure – Article 86 of the Staff Regulations – Reply to a request for assistance – Action for annulment – Act adversely affecting an official – Infringement of the right to be heard – No statement of reasons – Denial of access to the investigation report and other documents – Article 41 of the Charter of Fundamental Rights – Liability)

In Case T-65/19,

AI, represented by L. Levi and A. Champetier, lawyers,

applicant,

v

European Centre for Disease Prevention and Control (ECDC), represented by J. Mannheim and A. Iber, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers,

defendant,

APPLICATION under Article 270 TFEU seeking, first, annulment of the decisions of ECDC of 18 May 2018, 20 June 2018 and 26 October 2018 taken in response to the applicant's request for assistance on the ground of psychological harassment and his request for access to certain documents and, secondly, compensation for the damage which he suffered,

THE GENERAL COURT (Seventh Chamber),

composed of R. da Silva Passos, President, L. Truchot and M. Sampol Pucurull (Rapporteur), Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 1 October 2020,

gives the following

* Language of the case: English.

Judgment

I. Background to the dispute

- 1 The applicant, AI, was recruited by the European Centre for Disease Prevention and Control (ECDC) on [confidential]¹.
- 2 On 20 June 2017, the applicant submitted a request for assistance ('the first request for assistance') in accordance with Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), concerning alleged acts of psychological harassment by his Head of Unit, A ('the Head of Unit'). After describing those facts in detail, the applicant made the following request:

'I would be grateful if you can assist me in stopping this situation that is causing a lot of distress to me, and I would also be grateful if you could investigate if this behaviour, which I perceive as repetitive, aggressive and abusive towards me, constitutes harassment.'
- 3 On 14 July 2017, the applicant submitted an information form supplementing his first request for assistance.
- 4 On 7 August 2017, ECDC notified the European Anti-Fraud Office (OLAF) of the first request for assistance. On 27 September 2017, following several exchanges with ECDC, the Head of Unit 0.1 of OLAF sent a note to the Director of ECDC ('the Director'). That note indicated that OLAF had not initiated an investigation into those facts, that OLAF took note of the fact that ECDC was going to initiate its own investigation and that, in those circumstances, OLAF would not initiate an investigation itself.
- 5 On 28 September 2017, B, a former official of the European Commission, was mandated by the Director to carry out an investigation into the conduct of the Head of Unit denounced by the applicant and by another ECDC staff member, C, who had also submitted a request for assistance.
- 6 By email of the same day, the Director informed the applicant of the opening of the investigation following his first request for assistance and of the appointment of the investigator. She also informed him that, 'on receipt of [B's] report, [she would] make a decision on the matter'.
- 7 On 9 October 2017, the applicant was first heard by the investigator.
- 8 On 26 October 2017, the applicant contacted the Director to inform her of certain behaviour of the Head of Unit, similar to that previously reported in his first request for assistance, which had taken place during a working meeting held the previous day. The applicant informed the Director of his feelings of vulnerability and his concern about a meeting scheduled for that evening, also attended by the Head of Unit. In that context, the applicant asked to be relieved of the tasks in the context of which he was in contact with the Head of Unit.
- 9 The Director replied by email on the same day, indicating that she had rearranged her diary in order to be able to attend the upcoming meeting, which was of concern to the applicant. Following the meeting, the applicant and the Director had an initial discussion with the aim of identifying the tasks involving direct contact between the applicant and the Head of Unit and agreed to consider together, in the following days, a temporary solution for organising the applicant's work until the end of the investigation.

¹ Confidential data omitted.

- 10 In the course of that reflection, the applicant sent the Director a series of written options to mitigate the risk of moral harassment. Among the options listed ‘not in any particular order’, the applicant suggested to ‘move temporarily the line management of the section ... under another Head of Unit’ or to ‘try to avoid contact ... through the use of holidays, teleworking and flexi’.
- 11 On 30 October 2017 a meeting was held between the applicant and the Director, following which the Director suggested, by email dated 7 November 2017, that he opt for an occasional teleworking scheme for a longer period than normally planned, starting on 9 November 2017. In order to ensure his presence at meetings already scheduled and to organise the work of his team, the applicant finally postponed the start of the teleworking scheme to 13 November 2017.
- 12 On 25 November 2017, the applicant had a second interview with the investigator, this time by telephone, during which he described to the investigator the behaviour of the Head of Unit at the meeting of 25 October 2017 and his subsequent exchanges with the Director, as noted in paragraphs 8 to 11 above.
- 13 On 13 December 2017, the applicant ended his period of occasional teleworking. On the same date, the Head of Unit took leave until the end of 2017. The applicant, for his part, took leave at the beginning of 2018 and resumed his activity on 9 January 2018.
- 14 On 21 January 2018, B submitted his report to the Director (‘the investigation report’).
- 15 After remaining at his post throughout January 2018, the Head of Unit was placed on sick leave and replaced in his duties from 31 January 2018.
- 16 On 13 March 2018, the applicant requested, on the basis of Article 41(2)(b) of the Charter of Fundamental Rights of the European Union, access to the investigation report, including its conclusions and recommendations.
- 17 On 3 April 2018, the Head of Unit’s sick leave ended. On that date, he did not return to his previous duties, but was given tasks directly entrusted and supervised by the Director, without having any hierarchical link with the applicant.
- 18 By decision of 6 April 2018, in response to the applicant’s request of 13 March 2018 (see paragraph 16 above), the Director refused the applicant access to the investigation report on the ground that the proceedings initiated following the first request for assistance had not been closed. Moreover, in her view, the right of access of every person to the file concerning him or her, provided for in Article 41(2) of the Charter of Fundamental Rights, enables the safeguarding of his or her rights of defence when a decision adversely affects his or her interests.
- 19 On 6 April 2018, a meeting between the Head of Unit and the Director took place, during which she informed him orally about the outcome of the investigation.
- 20 By letter of 10 April 2018, the applicant submitted a new request for assistance (‘the second request for assistance’). In that request, he complained that the Head of Unit had contacted several ECDC staff members during and after the preparation of the investigation report to explain to them that the elements which the applicant had denounced in his first request for assistance were fabrications of a disgruntled employee. The applicant also pointed out that the Head of Unit was back in the office and could therefore continue to defame or harass him.
- 21 By letter of 16 April 2018, the applicant requested access to the investigation report for the second time, on the basis of Article 41 of the Charter of Fundamental Rights, but also of Article 13 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community

institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) and Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

- 22 A second meeting between the Director and the Head of Unit was scheduled for 16 April 2018, in order to give the Head of Unit the opportunity to formally comment on the investigation report, which had been communicated to him in the meantime. At the request of the Head of Unit, in order to allow him to prepare his oral observations, that meeting was postponed to 2 May 2018.
- 23 By decision of 8 May 2018, access to the investigation report requested by the applicant (see paragraph 21 above) was again refused on the grounds, first, that no decision adversely affecting him had yet been taken and, secondly, that the need to disclose to him personal data concerning the Head of Unit, other ECDC staff and external persons had not been established. Furthermore, the access request based on Regulation 45/2001 was transferred to the ECDC data protection officer.
- 24 On 15 May 2018, a third meeting took place between the Director and the Head of Unit, during which she informed him of her intention to terminate his contract on the basis of Article 47(c)(i) of the Conditions of Employment of Other Servants of the European Union in the version applicable to the dispute ('the CEOS').
- 25 By letter of 15 May 2018, written immediately after that meeting, the Head of Unit submitted his resignation 'in the interest of the service'.
- 26 By letter of 16 May 2018 to the Head of Unit, the Director of ECDC accepted his resignation. In that letter, first, the Director stated that the investigator had concluded that, in his view, the applicant's first request for assistance and a similar request made by another ECDC staff member could be upheld. Secondly, the Director recalled the comments made by the Head of Unit. Thus, according to him, the principle of presumption of innocence had not been respected during the investigation, the investigation report was marred by several factual errors, some of the persons involved in the investigation might have acted in bad faith and his intention had never been to harm anyone but to act in the interest of ECDC. Thirdly, the Director indicated that she had found some factual errors in the investigation report and that the Head of Unit was entitled to take action on some performance issues concerning several members of his unit. However, the Director considered, after reading the investigation report and the serious allegations made against him, including in testimonies, that the management style of the Head of Unit had caused unnecessary stress and anxiety to the staff. In those circumstances, the Director indicated that the relationship of trust between ECDC and the Head of Unit could no longer be established and that she was considering terminating his contract in accordance with Article 47(c)(i) of the CEOS. However, having noted that the Head of Unit had in the meantime submitted his resignation, the Director accepted it in the following terms:

'However, you have now submitted your resignation, which in practice means that your last day in service will be before a termination would take effect, thus I see that it is in the interest of the service to approve your resignation dated 15 May. Your notice period is 10 months, which means that your last day in service will be 15 March 2019.

As discussed and agreed in our meeting, you will work from home during your notice period on tasks assigned by me.

During your notice period, you should act in keeping with your duty of loyalty towards ECDC pursuant to Article 11 of the CEOS.'

- 27 On 18 May 2018, the Director sent the applicant a letter concerning his first request for assistance ('the first contested decision'). That letter was worded as follows:

'Further to my letter of 28 September 2017, in which I informed you of the launch of the investigation following your [first] request for assistance regarding alleged psychological harassment by [the] Head of Unit ..., I am now writing to inform you about the conclusion of the investigation and the related procedure. I received the report from the external investigator, [B], at the end of January. The outcome of the investigation provides an account from you and another claimant, also backed by several witness statements. The investigator concludes that in his view the two claims of harassment can be upheld.

As you know, [the Head of Unit] was absent in the first part of this year, and I could therefore only now conclude the process. I communicated the outcome of the report to [the Head of Unit] in April, after his return to the office, and in accordance with the procedure, gave him the opportunity to provide his views on the results of the investigation.

Having read the report and taken into account the information available to me, I came to the conclusion that there have been elements of psychological harassment. At the same time, I can see that there are a few factual errors in the report. While taking into account that [the Head of Unit], in his role ..., needed to act on certain issues, I do consider however that how he dealt with these issues and his way of managing has caused unnecessary stress and anxiety for staff. I was therefore contemplating appropriate measures, however, in the meantime, [the Head of Unit] has resigned from his post and will no longer be in the office. Considering his previous absence and subsequent re-assignment to the Director's Office and given his resignation, I trust that your request for assistance has been addressed and the situation causing you distress does no longer exist.'

- 28 On 29 May 2018, the Head of Unit submitted a request for assistance due to the disclosure of confidential information relating to the investigation against him in the Swedish media and anonymous threats he had received. That request led to the opening of an administrative investigation during which the applicant was heard.
- 29 By letter of 30 May 2018, the applicant requested, for the third time, access to the investigation report and to all the documents on the basis of which the Director of ECDC had made the first contested decision, including those on the basis of which she considered that the investigation report contained 'a few factual errors' ('the contested request for access'). That request was made on the basis of Article 41 of the Charter of Fundamental Rights. According to the applicant, such access became necessary in the light of the first contested decision and crucial in the light of his second request for assistance. In the same letter, the applicant requested further clarification as to the contractual situation of the Head of Unit after his resignation, mentioned in the first contested decision.
- 30 By email of the same day following the decision of 8 May 2018 (see paragraph 23 above), the applicant made a confirmatory application for access to the investigation report on the basis of Article 7(2) of Regulation No 1049/2001.
- 31 By letter of 20 June 2018, addressed to the applicant's lawyers ('the second contested decision'), the Director rejected the contested request for access, referred to in paragraph 29 above, in the following terms:

'You indicate that [your client's] request is based on the fact that [he] considers himself adversely affected by the [first contested] decision communicated to him in the letter of 18 May 2018. After due assessment of the arguments presented, I cannot see how the interest of your client could be adversely affected, as I have not dismissed the [first] request for assistance as unfounded. In addition, your client

has been duly given the opportunity to present his views during the investigation. The [second] request for assistance filed by your client on 10 April 2018 can equally not justify such a request, as no conclusion on this request has yet been reached.

Accordingly, I remain at my conclusion that access to the report and other documents is not necessary on the basis of Article 41 of the ... Charter of Fundamental Rights.

I believe that this conclusion is fully in line with the case-law of [the EU], according to which, in order to interpret the scope of the right of the defence, the situation of an inquiry procedure initiated following a request for assistance from a staff member with a complaint of harassment cannot, in any event, be compared to an inquiry procedure opened against that staff member. In similar cases, such a right of access based on the Charter [of Fundamental Rights] was even refused to complainants where it was concluded that the existence of harassment could not be established.'

- 32 By letter of the same day ('the second letter of 20 June 2018'), the Director replied to the confirmatory application for access to the investigation report made on 30 May 2018 on the basis of Regulation No 1049/2001 (see paragraph 30 above) and to the applicant's application made on 16 April 2018 on the basis of Regulation No 45/2001 (see paragraph 21 above). In that letter, the Director concluded that the applicant could, first, consult on the spot a non-confidential version of the investigation report and, secondly, receive a document containing his personal data, made available to him in accordance with Article 13 of Regulation No 45/2001.
- 33 On 2 July 2018, the applicant lodged a complaint under Article 90(2) of the Staff Regulations challenging the first and second contested decisions. In that complaint, he sought compensation for the non-material damage allegedly caused to him by the failure to recognise fully his status as a victim, the failure to impose a disciplinary penalty on the Head of Unit and the failure to take protective measures following his first request for assistance. That damage was aggravated, inter alia, by the denial of access to the investigation report. The applicant stated that 'the prejudice resulting directly from the harassment and ... from the fault of [ECDC for failing] to ensure working conditions complying with dignity, health and safety standards [would] be covered through separate submissions'.
- 34 By letter dated 7 September 2018, the Director informed the applicant, after interviewing certain staff members, that there was no evidence to support the allegations he had made in the second request for assistance (see paragraph 20 above) and rejected it.
- 35 On 12 September 2018, the applicant was able to consult a non-confidential version of the investigation report on site. He signed an attendance sheet stating, in handwriting, that he contested the conditions of access to that report.
- 36 On 11 October 2018, the applicant and four other ECDC staff members submitted a claim for compensation under Article 90(1) of the Staff Regulations for the non-material and material damage which they suffered as a result of the ECDC's inaction between 2012 and 2018 in relation to the conduct of the Head of Unit towards them.
- 37 By letter of 26 October 2018 ('the decision rejecting the complaint'), the Director rejected the applicant's complaint of 2 July 2018 (see paragraph 33 above). First, the Director disputed the admissibility of the complaint, arguing that the first contested decision did not constitute an act adversely affecting the applicant. Next, she argued that the conduct of the Head of Unit had not been minimised in that decision. The Director stated that, 'due to the gravity of [the Head of Unit's] behaviour, [she had contemplated] appropriate measures in order to address the outcome of the investigation report'. She also noted that the applicant's first request for assistance was 'to put an end to the situation and to investigate the alleged facts'. She also described the protective measures taken in respect of the applicant before the adoption of the first contested decision. Furthermore, she indicated that she had accepted the resignation of the Head of Unit 'in the interest of the service'. Moreover, the

Director pointed out that the applicant had been able to consult a non-confidential version of the investigation report on 12 September 2018. In her view, full access to the report had not been granted because of the protection of the confidentiality of the interviews with witnesses and with the Head of Unit himself, the sensitivity of the issue and the need to preserve ECDC's capacity to carry out investigations. Finally, the Director rejected the claim for compensation made in the complaint.

- 38 On 21 November 2018, the applicant lodged a complaint with the European Ombudsman concerning the second letter of 20 June 2018, mentioned in paragraph 32 above.
- 39 On 5 December 2018, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the letter of 7 September 2018 concerning his second request for assistance (see paragraph 34 above).
- 40 On 11 February 2019, the Director rejected in its entirety the claim for compensation mentioned in paragraph 36 above.
- 41 By letter of 6 March 2019, the letter of 7 September 2018 rejecting the second request for assistance (see paragraph 34 above) was withdrawn by the Director following the applicant's complaint of 5 December 2018.
- 42 By letter dated 15 March 2019, the Director provided the applicant with a summary of the statements of the various witnesses heard following the second request for assistance and invited him to an interview, which was held on 25 March 2019.
- 43 On 15 March 2019, the Head of Unit permanently left ECDC after his notice period.
- 44 By letter of 5 April 2019, the Director informed the applicant that, in the absence of grounds for further examination of the facts referred to in the second request for assistance, she had decided to reject that request.
- 45 By decision of 6 June 2019, the Ombudsman found that ECDC had not acted with maladministration by granting the applicant, in the second letter of 20 June 2018, only partial access to the investigation report.

II. Procedure and forms of order sought

- 46 By a document lodged at the Registry of the General Court on 5 February 2019, the applicant brought the present action.
- 47 By document lodged at the Registry of the General Court on 12 February 2019, the applicant requested that he be granted anonymity under Article 66 of the Rules of Procedure of the General Court. That application was allowed by decision of the Court of 30 April 2019.
- 48 By decision of 21 October 2019, the President of the General Court, pursuant to Article 27(3) of the Rules of Procedure, reassigned the case to a new Judge-Rapporteur, attached to the Seventh Chamber.
- 49 Upon hearing the report of the Judge-Rapporteur, the Court (Seventh Chamber) decided to open the oral procedure on 26 May 2020.
- 50 By order of 19 June 2020, the Court, on the basis of Article 91(c) and Article 104 of the Rules of Procedure, ordered ECDC to produce the documents to which access had been refused by the second contested decision. Those documents were transmitted to the Court on 27 August 2020 and were not notified to the applicant, in accordance with Article 104 of the Rules of Procedure.

- 51 On 24 June 2020, on a proposal from the Judge-Rapporteur, the Court, in the context of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, put several written questions to the parties and requested the production of certain documents. The parties complied with those measures within the period prescribed.
- 52 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 1 October 2020.
- 53 The applicant claims that the Court should:
- annul the first and second contested decisions and, if need be, the decision rejecting the complaint;
 - order compensation for the non-material damage, assessed *ex aequo et bono* at EUR 40 000;
 - order ECDC to pay the costs.
- 54 ECDC contends that the Court should:
- dismiss the application as partially inadmissible and ill-founded in its entirety;
 - order the applicant to pay the costs.

III. Law

A. Subject matter of the action

- 55 In addition to the annulment of the first and second contested decisions, the applicant asks the Court to annul, ‘if need be’, the decision rejecting the complaint.
- 56 According to settled case-law, claims for annulment formally directed against the decision rejecting a complaint have the effect of bringing before the Court the act against which the complaint was brought where they are, as such, devoid of independent content (see judgment of 13 July 2018, *Curto v Parliament*, T-275/17, EU:T:2018:479, paragraph 63 and the case-law cited).
- 57 However, where the scope of the decision to reject the complaint differs from that of the measure against which that complaint was made, inter alia where it changes the original decision or where it contains a re-examination of the applicant’s situation in the light of new elements of law or of fact which, had they arisen or become known by the competent authority before the adoption of the original decision, would have been taken into consideration, the General Court may be required to rule specifically on the claim formally directed against the decision to reject the complaint (see judgment of 19 December 2019, *ZQ v Commission*, T-647/18, not published, EU: T:2019:884, paragraph 36 and the case-law cited).
- 58 In the present case, the decision rejecting the complaint is not purely confirmatory of the second contested decision, in that the Director took a position on new elements which arose after the adoption of that decision and after the date of the complaint. As regards the documents to which access had been refused by the second contested decision, the Director found that the applicant had finally been able to consult on the spot, on 12 September 2018, a non-confidential version of the investigation report and to obtain, on the basis of Article 13 of Regulation No 45/2001, a document containing his personal data.

- 59 In those circumstances, it is necessary to rule on the claims for annulment of both the first and second contested decisions and the decision to reject the complaint.
- 60 In addition, the decision rejecting the complaint clarifies some of the reasons for the first and second contested decisions. With regard to the first contested decision, it acknowledges the ‘gravity’ of the Head of Unit’s conduct and provides details, in particular, of the circumstances which led the Director to accept, ‘in the interest of the service’, his resignation. With regard to the second contested decision, it added that full access to the investigation report had not been granted to the applicant because of the protection of the confidentiality of the interviews with the witnesses and with the Head of Unit himself, the sensitive nature of the problem and the need to preserve ECDC’s ability to carry out investigations. Consequently, in view of the evolving nature of the pre-litigation procedure, that additional statement of reasons must also be taken into consideration when examining the legality of the first and second contested decisions, since that statement of reasons is deemed to coincide with the latter (see, to that effect, judgment of 9 December 2009, *Commission v Birkhoff*, T-377/08 P, EU:T:2009:485, paragraphs 55 and 56 and the case-law cited).

B. The claim for annulment

1. The application for annulment of the first contested decision

- 61 The applicant puts forward three pleas in law in support of his application for annulment of the first contested decision, as supplemented by the decision rejecting the complaint. The first plea alleges breach of the right to be heard, the second alleges breach of the obligation to state reasons and the third, in substance, alleges breach of Articles 24 and 86 of the Staff Regulations.
- 62 ECDC requests the Court to declare that application for annulment manifestly inadmissible, in the absence of an act adversely affecting the applicant. In the alternative, it requests the Court to reject the three pleas in law as unfounded.

(a) Preliminary observations

- 63 As a preliminary remark, it is worth recalling the obligations of the administration when a request for assistance is made by an official or a staff member.
- 64 Where a request for assistance for the purposes of Article 24 of the Staff Regulations is made to the appointing authority (‘AA’) or, as the case may be, to the authority authorised to conclude contracts of employment (‘AECE’) of an institution under Article 90(1) of the Staff Regulations, it must, in accordance with the obligation to provide assistance and if that authority is confronted with an incident which is incompatible with the orderly and smooth running of the service, intervene with all the necessary energy and respond with the speed and solicitude required by the circumstances of the case with a view to establishing the facts and drawing the appropriate, and informed, consequences. To that end, it is sufficient that the official or staff member who is seeking the protection of his or her institution provide prima facie evidence that the attacks of which that person claims to have been the victim actually took place. In the presence of such evidence, it is for the institution in question to take appropriate measures, in particular by having an administrative enquiry carried out, in order to establish the facts giving rise to the complaint, in collaboration with the person making the complaint, and, in the light of the results of the enquiry to adopt the necessary measures, such as the opening of disciplinary proceedings, against the person concerned when the administration concludes, at the end of the administrative investigation, that psychological harassment has occurred (see judgment of 3 October 2019, *DQ and Others v Parliament*, T-730/18, EU:T:2019:725, paragraph 80 and the case-law cited).

- 65 The duty to assist under Article 24 of the Staff Regulations requires that applicants for assistance be informed in good time of the outcome of their request. In particular, if disciplinary proceedings are initiated, the applicant for assistance must be informed of the nature and severity of the penalty imposed (see, to that effect, judgment of 3 October 2019, *DQ and Others v Parliament*, T-730/18, EU:T:2019:725, paragraph 108 and the case-law cited). Furthermore, in the case of a request for assistance concerning alleged acts of harassment, any decision by the administration as to the existence or non-existence of such acts must be prompt, explicit and reasoned (see, to that effect, judgment of 5 December 2000, *Campogrande v Commission*, T-136/98, EU:T:2000:281, paragraph 58).
- 66 It should be noted, moreover, that the possible recognition by the AA, at the end of the administrative investigation, of the existence of psychological harassment is in itself likely to have a beneficial effect in the therapeutic recovery process of the victims and may, moreover, be used by them for the purposes of a possible national legal action (see judgment of 13 July 2018, *Curto v Parliament*, T-275/17, EU:T:2018:479, paragraph 59 and the case-law cited).
- 67 It is in the light of those considerations that the admissibility of the application for annulment of the first contested decision and its merits must be examined.

(b) Admissibility

- 68 Without formally raising a plea of partial inadmissibility of the action, ECDC submits that the application for annulment of the first contested decision is manifestly inadmissible. According to ECDC, the administrative investigation was not closed without further action. Contrary to other cases examined in the case-law, there was no rejection of the complaint in this case. On the contrary, the applicant's first request for assistance to put an end to the situation and to examine the Head of Unit's conduct was accepted in its entirety.
- 69 First of all, according to ECDC, several steps were taken following that request, the first of which was the referral to OLAF on 7 August 2017. The investigation was opened by the Director after OLAF confirmed that no investigation was being conducted on its initiative. From 26 October 2017, the applicant was no longer in direct contact with the Head of Unit. Subsequently, on the basis of the investigation report, the Director accepted the Head of Unit's resignation on 16 May 2018, with effect from 16 March 2019, namely one and a half months before he reached retirement age, in the interest of the service. ECDC states that the initiation of a disciplinary procedure may take a considerable amount of time and may not necessarily result in the dismissal of the person concerned, which is the highest sanction. Finally, follow-up measures were put in place during the Head of Unit's notice period. In particular, the Head of Unit worked remotely on tasks directly assigned and supervised by the Director. Furthermore, in the context of the second request for assistance, the applicant did not provide any evidence that the situation of psychological harassment had continued after the adoption of the first contested decision.
- 70 Next, as regards the alleged minimisation of the seriousness of the Head of Unit's conduct, ECDC considers that it cannot be inferred either from the wording of the first contested decision or, more generally, from all the measures taken by the Director following the first request for assistance.
- 71 Finally, with regard to the sanctions which the applicant believes should have been imposed, ECDC adds that it is not obliged to initiate a disciplinary procedure or to impose a sanction where the report drawn up following an investigation proposes the initiation of such a procedure. A request for assistance does not, in itself, aim to impose sanctions on the alleged harasser, but rather to help the applicant in his or her efforts. Moreover, the situation in question is particular, due to the Head of Unit's resignation. In any event, the discussion of the merits of the sanction was not linked to the

question of whether the first contested decision adversely affected the applicant. During the hearing, ECDC also pointed out that, in his first request for assistance, the applicant had not asked the Director to initiate disciplinary proceedings against the Head of Unit.

- 72 For his part, the applicant claims that, contrary to what ECDC maintained in the decision rejecting the complaint and in the present action, the first contested decision is an act adversely affecting him. In that respect, he points out that, despite the measures adopted by the Director during the administrative investigation described in paragraph 69 above, the first contested decision did not fully satisfy him. First, the Director had not acknowledged, clearly and unambiguously, that the Head of Unit had been guilty of psychological harassment of which the applicant was the victim. The use of the expression 'elements of harassment' in that decision confirms its ambiguity and minimises the impact of the Head of Unit's behaviour towards him. Secondly, while the investigator had acknowledged the validity of his complaint, no 'appropriate measures' were adopted by the Director because of the Head of Unit's voluntary resignation. In particular, no disciplinary procedure was initiated.
- 73 Under the first sentence of Article 91(1) of the Staff Regulations, the Court of Justice of the European Union has jurisdiction in any dispute between the European Union and any of the persons referred to in the Staff Regulations concerning the legality of an act adversely affecting that person within the meaning of Article 90(2) of those regulations.
- 74 According to settled case-law, for the purposes of Article 90(2) of the Staff Regulations, only those acts or measures which have binding legal effects such as to affect the interests of an official or staff member by bringing about a distinct change in his legal position are acts adversely affecting officials. Such acts must emanate, in the case of a staff member subject to the CEOS, from the AECE and be of a decision-making nature (see judgment of 18 May 2015, *Gyarmathy v EMCDDA*, F-79/13, EU:F:2015:49, paragraph 44 and the case-law cited). The concept of an act adversely affecting an official covers both decisions and failures to take a measure imposed on the administration, expressly or implicitly, by the Staff Regulations in order to guarantee the rights of officials (see order of 25 October 1996, *Lopes v Court of Justice*, T-26/96, EU:T:1996:157, paragraph 31 and the case-law cited).
- 75 Furthermore, in order for an official or former official to be entitled, in an action brought under Articles 90 and 91 of the Staff Regulations, to seek the annulment of an act adversely affecting him within the meaning of Article 90(2) of the Staff Regulations, he must have at the time when he brings his action, a vested and present interest, which is sufficiently established to have that act annulled, such an interest assuming that the application is likely, if successful, to be of benefit to him (see judgment of 9 December 2010, *Commission v Strack*, T-526/08 P, EU:T:2010:506, paragraph 43 and the case-law cited).
- 76 In the present case, the first contested decision was adopted by the Director, in her capacity as AECE, in response to the applicant's first request for assistance, in order to inform him of the conclusion of the investigation initiated on 28 September 2017 and of the outcome of the related procedure, in compliance with the obligations imposed by Article 90(1) and Article 24 of the Staff Regulations. In particular, on the basis of the investigation report and the information made available to her, the Director qualified the conduct complained of in the light of Article 12a(3) of the Staff Regulations and informed the applicant of the action taken on that request for assistance. That decision thus produces legal effects capable of affecting the applicant's interests. The first contested decision is therefore of a decision-making nature and constitutes an act adversely affecting an official within the meaning of the case-law referred to in paragraph 74 above.

- 77 As regards the applicant's interest in bringing proceedings against the first contested decision, it should be recalled that, in accordance with the case-law cited in paragraph 64 above, the Director was obliged, in response to the first request for assistance, first, to take appropriate steps to establish the facts giving rise to that request and, secondly, in the light of the results of the investigation, to adopt the appropriate measures.
- 78 It has been held that it is inherent to the requirements of effective judicial review that an applicant for assistance should be able to challenge, in his action against the decision concerning his application, the appropriateness of the measures adopted in response to that application, including where he complains that the author of those measures did not initiate disciplinary proceedings against a third party found guilty of psychological harassment, in so far as he alleges, in that regard, grievances which are personal to him (see, to that effect, judgment of 13 July 2018, *SQ v EIB*, T-377/17, EU:T:2018:478, paragraph 124).
- 79 As is apparent from paragraphs 85 to 116 below, in the context of the third plea in law invoked against the first contested decision, the parties disagree as to whether the Director complied with her duty to assist. Unlike the applicant, ECDC considers that the Director fully complied with the first request for assistance. Those same arguments are relied on by ECDC to contest the admissibility of the present application for annulment on the ground that the first contested decision does not constitute an act adversely affecting the applicant.
- 80 ECDC cannot make the applicant's interest in bringing proceedings against the first contested decision depend on the merits of the complaints which he puts forward in support of his application for annulment (see, to that effect, judgment of 4 July 2017, *European Dynamics Luxembourg and Others v European Union Agency for Railways*, T-392/15, EU:T:2017:462, paragraph 41 and the case-law cited). In that regard, it should be noted that an applicant's interest in having an act annulled presupposes that such annulment may benefit him, not that he will definitely benefit from it (judgment of 23 October 2012, *Strack v Commission*, F-44/05 RENV, EU:F:2012:144, paragraph 101).
- 81 In the present case, if the Court were to consider that the application for annulment of the first contested decision is well founded, that would imply the subsequent adoption by the Director of a new decision in response to the applicant's first request for assistance, which could establish the facts more clearly and, if appropriate, lead to the initiation of disciplinary proceedings against the Head of Unit. In that sense, the present action is likely to be of benefit to him. The applicant therefore has an interest in bringing proceedings against the first contested decision.
- 82 Contrary to what ECDC argued during the hearing, the fact that the applicant did not formally request the Director, in the first request for assistance, to initiate disciplinary proceedings against the Head of Unit cannot call into question his interest in acting. As stated in paragraph 64 above, for the authority to which a request for assistance is addressed to be required to establish the facts in dispute and to draw the appropriate conclusions, including the initiation of disciplinary proceedings against the person concerned, it is sufficient for the official or other staff member claiming the protection of his or her institution to provide in his or her request for assistance prima facie evidence of the reality of the attacks of which he claims to be the victim.
- 83 It follows from all the foregoing considerations that the objection raised by ECDC must be rejected.

(c) Substance

- 84 The Court considers it appropriate to analyse first the third plea in law, before examining the first and second pleas in law.

(1) The third plea in law, alleging, in essence, infringement of Articles 24 and 86 of the Staff Regulations

- 85 The third plea in law is set out in the application under the heading ‘Manifest error of assessment and manifest error of fact – Infringement of Article 86 of the Staff Regulations’. As the applicant stated during the hearing in response to a question from the Court, that plea in law alleges, in essence, the infringement of Articles 24 and 86 of the Staff Regulations. Even if the applicant refers formally in his pleadings only to Article 86 of the Staff Regulations, the infringement of Article 24 of the Staff Regulations is inferred from the arguments put forward in support of that plea in law, according to which the reply given by ECDC to his first request for assistance is not satisfactory, in substance, for two reasons.
- 86 First, the Director did not describe the conduct complained of as ‘full’ psychological harassment, nor did she inform the applicant of the conditions in which the Head of Unit had tendered his resignation and was going to serve his notice period, in infringement of Article 24 of the Staff Regulations.
- 87 Secondly, accepting the Head of Unit’s resignation without opening a disciplinary procedure is not in conformity with Articles 24 and 86 of the Staff Regulations.
- 88 It should be noted that ECDC was able to deduce from the applicant’s written submissions that the latter had based the third plea in law submitted in support of the application for annulment of the first contested decision, implicitly but unequivocally, in particular on the provisions of Article 24 of the Staff Regulations. It is clear from ECDC’s written submissions that the arguments put forward in its defence are intended to refute the complaint that the facts giving rise to the first request for assistance were not sufficiently characterised as psychological harassment, in infringement of Article 24, and not merely to contest a request by the applicant, based on Article 86 of the Staff Regulations, for disciplinary proceedings to be brought. It follows that the plea of inadmissibility relating to the third plea in law, raised by ECDC during the hearing and alleging that that plea was based belatedly on Article 24 of the Staff Regulations, must be rejected.

(i) Infringement of Article 24 of the Staff Regulations due to the absence of a classification of the facts as ‘full’ psychological harassment and the absence of a description of the measures adopted against the Head of Unit

- 89 The applicant points out that the first contested decision relies on the investigation report, the content of which was not disclosed to him, in order to conclude that there were ‘elements’ of psychological harassment. In so doing, ECDC did not expressly confirm that the Head of Unit’s conduct constituted psychological harassment within the meaning of Article 12a(3) of the Staff Regulations. In the light of the investigation report and the testimonies of the applicant and other ECDC staff members, that conduct should have been classified as ‘full’ harassment. In response to the first request for assistance, ECDC should have taken a clear position as to whether or not psychological harassment had occurred.
- 90 Furthermore, the measures taken by ECDC against the Head of Unit do not constitute a sufficient response to the applicant’s first request for assistance. In that regard, the applicant submits that, at the time the action was brought, no one knew with certainty the Head of Unit’s professional status within ECDC, nor his position, nor, more specifically, the conditions under which he had resigned. In those circumstances, he would have been in a position to defame the applicant during the period of notice, as the latter complained in his second request for assistance.
- 91 ECDC replies that the first contested decision does not minimise the Head of Unit’s conduct. ECDC never considered that the alleged facts did not constitute ‘full’ harassment within the meaning of Article 12a of the Staff Regulations. Moreover, no impunity was established, as ECDC had fully complied with the applicant’s first request for assistance.

- 92 In response to a question from the Court during the hearing, ECDC explained that the persons involved in the cases that the Head of Unit supervised had been informed of his resignation and the fact that he would be leaving ECDC after the notice period. A letter was also reportedly sent to the ECDC management board, which is composed of representatives of all the Member States, outlining the finding of psychological harassment and the circumstances under which the Head of Unit was leaving the service. The members of that board would therefore have been informed of the exact circumstances under which the Head of Unit had to leave his post.
- 93 In that regard, it should be noted that the purpose of an administrative investigation is to establish the facts and to draw, in full knowledge of the facts, the appropriate consequences both with regard to the case under investigation and, in general and in order to comply with the principle of good administration, in order to avoid the recurrence of such a situation in the future (see judgment of 13 July 2018, *Curto v Parliament*, T-275/17, EU:T:2018:479, paragraph 59 and the case-law cited).
- 94 Where, in response to a request for assistance for alleged acts of harassment, the AA or the AECE considers that there is sufficient prima facie evidence to open an administrative investigation, that investigation must necessarily be completed so that the administration, enlightened by the findings of the report drawn up at the end of that investigation, can take a definitive position in that respect, enabling it either to close the request for assistance without further action or, where the alleged facts are proven and fall within the scope of Article 12a of the Staff Regulations, in particular to initiate disciplinary proceedings with a view, where appropriate, to imposing disciplinary penalties on the alleged harasser (see, in this respect, judgment of 24 April 2017, *HF v Parliament*, T-570/16, EU:T:2017:283, paragraphs 56 and 57 and the case-law cited).
- 95 The establishment of the facts by the institution following the investigation is essential for the person who considers himself or herself to be a victim of harassment. A situation of harassment, if established, harms the personality, dignity and physical or psychological integrity of the victim. As noted in paragraph 66 above, the recognition, following the administrative investigation, of the existence of psychological harassment is in itself likely to have a beneficial effect in the therapeutic recovery process of the victim. It can also be used by the victim for the purposes of a possible national legal action. It follows that the administrative enquiry must lead the AA or the AECE to take a definitive position on the existence or not of harassment within the meaning of Article 12a of the Staff Regulations.
- 96 In the present case, the Director informed the applicant of the investigator's conclusion that his complaint could be upheld, but did not provide him with the investigation report, despite his repeated requests. Moreover, contrary to what ECDC argued, the Director's statements in the first contested decision remain very general and are ambiguous. After recalling the investigator's conclusion, she found the existence of 'elements of harassment' on the basis of the investigation report, while stating that 'the [said] report contained a few factual errors'. She added that 'the way in which [the Head of Unit] dealt with [certain] difficulties and his way of managing [had] caused unnecessary stress and anxiety for staff, [while] taking into account that ... in his role ... [he] had to act on certain issues'. In response to the complaint, the Director acknowledged the 'gravity' of the Head of Unit's behaviour, but did not provide more details.
- 97 The description of the facts formulated in those terms following an investigation carried out in response to a request for assistance made on the basis of Article 24 of the Staff Regulations does not satisfy the obligations imposed by that provision, as noted in paragraphs 64 to 66 and 94 above. In her reply to the first request for assistance, the Director did not sufficiently establish the facts and did not adopt a definitive and unambiguous position on the existence or not of psychological harassment. In particular, the acknowledgement of the existence of 'elements' of harassment, accompanied by considerations that appear to call into question the analysis in the investigation report that the first request for assistance could be upheld, is not sufficiently clear.

- 98 Furthermore, ECDC did not inform the applicant precisely of the action taken on the investigation report, in particular as regards the ‘appropriate measures’ which had been envisaged before the Head of Unit’s resignation and the conditions for accepting that resignation, whereas that information should have been provided to him in so far as it formed part of the processing of the request for assistance (see, to that effect and by analogy, judgment of 3 October 2019, *DQ and Others v Parliament*, T-730/18, EU:T:2019:725, paragraph 108).
- 99 It was only following ECDC’s response to a measure of organisation of procedure adopted by the Court that the applicant was informed that the measure envisaged was the termination of the Head of Unit’s contract on the basis of Article 47(c)(i) of the CEOS. The absence of communication of that information and the mere mention of the Head of Unit’s voluntary resignation may have led the applicant and all the staff of ECDC to believe that he enjoyed a degree of impunity.
- 100 In accordance with the case-law referred to in paragraph 64 above, the duty to assist implies intervening with all necessary energy in the presence of an incident incompatible with the orderly and smooth running of the service. The purpose of the duty to assist referred to in Article 24 of the Staff Regulations is to provide officials and other staff members in active employment with security for the present and the future so that, in the general interest of the service, they can perform their duties to the best of their ability (judgment of 13 July 2018, *Curto v Parliament*, T-275/17, EU:T:2018:479, paragraph 57). In that regard, it should be noted that the administrative investigation initiated following a request for assistance on grounds of harassment makes it possible, in the long term, to restore working conditions which are in the interest of the service (see, to that effect, judgment of 3 October 2019, *DQ and Others v Parliament*, T-730/18, EU:T:2019:725, paragraph 84). It also serves a general interest objective, namely the identification of possible harassment practices detrimental to human dignity (see, to that effect, judgment of 4 April 2019, *OZ v EIB*, C-558/17 P, EU:C:2019:289, paragraph 66).
- 101 In the present case, although that obligation derives from Article 24 of the Staff Regulations, ECDC failed to inform the applicant, in the first contested decision, of the conditions under which the Head of Unit’s resignation had been accepted. In particular, the Director did not explain that she had considered terminating his contract on reading the investigation report and that she had accepted his resignation in the interest of the service, by agreeing with him on specific arrangements for giving his notice, which were intended to restore the smooth running of the service. It is clear from the clarifications provided by ECDC during the hearing that that information was communicated to the members of the management board, but not to the applicant or to the other persons working with the Head of Unit, whereas transparency on that subject could have reassured the applicant following his first request for assistance, restored serenity in the working conditions and thus contributed to the proper functioning of the service.
- 102 It follows therefrom that the applicant’s complaints relating, in substance, to an infringement of Article 24 of the Staff Regulations, in the absence of an adequate description of the facts and of the measures adopted in respect of the Head of Unit, must be upheld.
- (ii) Infringement of Articles 24 and 86 of the Staff Regulations, on the grounds that the Head of Unit’s resignation was accepted and that no disciplinary proceedings were initiated*
- 103 The applicant claims that the Head of Unit’s resignation was not a valid reason for not taking any other measure in the light of the conclusion of the investigation and, in particular, for not initiating disciplinary proceedings on the basis of Article 86 of the Staff Regulations, in compliance with ECDC’s internal implementing rules. A voluntary decision to leave service is very much different from a disciplinary termination of the employment, as the case may be, without notice and with a reduction of pension rights. The Director acknowledged in the first contested decision that she was considering ‘appropriate measures’, which would confirm that the situation merited appropriate sanctions, without

any margin of appreciation in that respect. During the hearing, the applicant added that the smooth running of the service had not been guaranteed by the measures taken, which was highlighted by the request for assistance submitted by the Head of Unit on 29 May 2018, who alleged that the applicant had discredited him.

- 104 ECDC replies that the purpose of assistance is not to impose sanctions, but to establish the facts and prevent further difficulties, and that that purpose has been achieved in this case. Moreover, according to Article 3(1)(b) of Annex IX to the Staff Regulations, there was no legal obligation for ECDC to initiate a disciplinary procedure, given that the Head of Unit had resigned in the meantime.
- 105 It should be noted, as ECDC did, that neither Article 86 of the Staff Regulations nor Article 3 of Annex IX to the Staff Regulations require disciplinary proceedings to be initiated where an official or other staff member is found to have failed to fulfil his or her obligations.
- 106 Moreover, ECDC Implementing Rule No 33 on preventing psychological harassment and sexual harassment, and ECDC Implementing Rule No 29 on the conduct of administrative investigations and disciplinary procedures, do not require the initiation of disciplinary proceedings either. It is true, as the applicant states, that point 3 of ECDC Implementing Rule No 33 recalls the general principle that ‘any conduct deemed to constitute psychological harassment or sexual harassment is regarded by [ECDC] as unacceptable and will be punished’. However, point 7.3 of that implementing rule, which specifically governs the formal procedure applicable in cases of alleged harassment, states that, [i]f the [investigation] report proposes the opening of disciplinary proceedings, the [AA] may decide, once it has heard the person or persons concerned, to open such proceedings and apply the ensuing penalties if there is confirmation of the wrongful act’.
- 107 According to the case-law, with regard to the measures to be taken in a situation falling within the scope of Article 24 of the Staff Regulations, the administration has a wide discretion, subject to review by the EU judicature, in the choice of measures and methods of for implementing that provision (see judgment of 13 July 2018, *SQ v EIB*, T-377/17, EU:T:2018:478, paragraph 135).
- 108 In the event of misconduct which may justify the dismissal of a member of temporary staff, in view of that broad discretion, there is no obligation on the part of the AECE to initiate a disciplinary procedure in respect of that member of staff instead of resorting to the option of unilateral termination of contract provided for in Article 47(c) of the CEOS. Only if the AECE intends to dismiss a member of the temporary staff without notice in the event of a serious breach of his or her obligations should the disciplinary procedure laid down in Annex IX to the Staff Regulations, applicable by analogy to temporary staff, be initiated, as provided for in Article 49(1) of the CEOS (see, to that effect, judgment of 23 October 2013, *Gomes Moreira v ECDC*, F-80/11, EU:F:2013:159, paragraph 49 and the case-law cited).
- 109 As is apparent from the first contested decision, the Director communicated the final version of the investigation report to the Head of Unit in the course of April 2018, after his return from sick leave, and invited him to submit his observations on that report. ECDC stated in the proceedings before the Court that, in accordance with the Head of Unit’s right to be heard, the Director informed him on 15 May 2018, during a meeting, that she intended to terminate his contract on the basis of Article 47(c)(i) of the CEOS. Following that meeting, the Head of Unit immediately submitted his resignation. As can be seen from the decision rejecting the complaint, that resignation was accepted by the Director on 16 May 2018 in the interest of the service.
- 110 The letter of 16 May 2018 containing the acceptance of the Head of Unit’s resignation, produced by ECDC at the request of the Court, confirms the circumstances in which the resignation was accepted. It appears from that letter that, on reading the ‘serious allegations put forward’, ECDC had considered that it could no longer cooperate with the Head of Unit. In those circumstances, the Director’s intention, of which he had been informed the day before, was to terminate his contract on the basis of

Article 47(c)(i) of the CEOS. However, the Director essentially noted that the Head of Unit had submitted his resignation immediately after the meeting of 15 May 2018, which meant, in practice, that his last day of service, as a result of that resignation, would take place, within the period of notice, before the actual departure date which would have been fixed in the event of termination of his contract of employment. The Head of Unit's resignation was therefore accepted in the interest of the service. That letter also mentioned the conditions under which the Head of Unit would perform his work during the notice period, to which he had agreed, namely that he would work from home on tasks assigned by the Director. Finally, the Director reminded the Head of Unit that during the period of notice he had to respect the obligations laid down in Article 11 of the Staff Regulations.

- 111 It follows from the above that the Head of Unit's voluntary resignation is the consequence of the actions taken by ECDC following the administrative investigation initiated in response to the first request for assistance. That is confirmed by the Head of Unit's resignation letter of 15 May 2018, which does not justify his decision by personal reasons, but refers to the 'interest of the service'. It should also be noted that he resigned from his post, grade AD 12, one and a half months before reaching retirement age and several years before reaching the legal retirement age in May 2021, so that his resignation resulted in a reduction of his pension rights. Furthermore, since during his notice period he worked directly with the Director following her decision to do so, the Head of Unit lost the management allowance he was receiving as Head of Unit. As a consequence, that resignation had certain adverse economic effects for him. Lastly, the particular conditions under which he carried out his work during that period prevented the applicant from having any professional contact with him.
- 112 Admittedly, the Director could have decided to terminate the Head of Unit's contract instead of accepting his resignation. However, that option would have delayed the Head of Unit's actual date of termination of his activities, inasmuch as a duly reasoned decision would then have been required (see, to that effect, judgment of 11 September 2013, *L v Parliament*, T-317/10 P, EU:T:2013:413, paragraph 60 and the case-law cited). Such a decision to terminate could, moreover, have been challenged by the Head of Unit.
- 113 The Director could also have initiated a disciplinary procedure against the Head of Unit. However, as ECDC points out, such a procedure takes some time. Moreover, the facts reported by the applicant would not necessarily have led to the disciplinary dismissal of the Head of Unit, which is the highest sanction. In addition, the applicant disregards the fact that the resignation was accompanied by measures intended to prevent the Head of Unit from having a hierarchical relationship with him and to ensure the smooth running of the service during the period of notice. The Head of Unit agreed to work from home during that period, carrying out tasks directly entrusted to him by the Director. Furthermore, the fact that the Head of Unit himself submitted a request for assistance two weeks after the adoption of the first contested decision does not demonstrate, contrary to the applicant's allegation, that the initiation of disciplinary proceedings was necessary, instead of the Director's acceptance of his resignation. The Head of Unit could also have submitted that request if that procedure had been initiated.
- 114 Having regard to all the foregoing considerations, the existence of a manifest error of assessment on the part of the Director is not established as regards the fact that she accepted the Head of Unit's resignation instead of terminating his contract or initiating disciplinary proceedings against him. The first contested decision therefore does not infringe Articles 24 and 86 of the Staff Regulations in that respect.
- 115 By contrast, as stated in paragraphs 97 and 98 above, the first contested decision infringes Article 24 of the Staff Regulations in that ECDC failed to sufficiently establish the facts following the investigation report, to take a definitive and unambiguous position on that basis as to whether or not there was psychological harassment within the meaning of Article 12a(3) of the Staff Regulations and to inform the applicant of the action taken on his first request for assistance, in particular to inform him of the

Director's initial intention to terminate the Head of Unit's contract, before he had submitted his resignation, and of the conditions under which that resignation had been accepted, including the arrangements during the notice period.

116 In the light of the foregoing, it is necessary to uphold in part the third plea in law in support of the application for annulment of the first contested decision, as supplemented by the decision rejecting the complaint, on the ground of infringement of Article 24 of the Staff Regulations as regards the aspects referred to in paragraphs 102 and 115 above.

(2) The first plea in law, alleging breach of the right to be heard

117 The applicant claims that he was heard by the investigator but not by the Director before the adoption of the first contested decision, in breach of Article 41(2)(a) of the Charter of Fundamental Rights, as interpreted by the case-law. The applicant states that he was not able to comment on the findings contained in the investigation report, to which he did not have access before the adoption of the contested decision, or on the other elements taken into account by the Director. The applicant states that the first contested decision is prejudicial to him and that he was not informed, before its adoption, of its content or of the nature of the interest of the service justifying ECDC's acceptance of the Head of Unit's resignation instead of initiating a disciplinary procedure.

118 ECDC replies that the person concerned by the investigation and the applicant do not enjoy the same rights in the conduct of the investigation, which justifies that the latter did not have access to the investigation report. Nevertheless, he was granted the possibility of partial consultation of the investigation report on 12 September 2018, while respecting the privacy and integrity of the persons mentioned in the report, as confirmed by the Ombudsman in his decision of 6 June 2019. In addition, the applicant was heard by the investigator on two occasions. Moreover, according to ECDC, the right to be heard provided for in Article 41(2)(a) of the Charter of Fundamental Rights is guaranteed when the individual measure adversely affects the person, which is not the case here. ECDC adds that, in any event, if the applicant had been heard, the result would have been similar, in so far as ECDC granted his first request for assistance.

119 In response to that argument, the applicant reiterates in the reply his allegation that the first contested decision did not grant his first request for assistance.

120 It should be recalled that a person who, on the basis of Articles 12a and 24 of the Staff Regulations, has lodged a request for assistance on the ground that he or she is being subjected to psychological harassment may rely on the right to be heard on the facts concerning him or her, under the principle of good administration (see judgment of 4 June 2020, *SEAE v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 66 and the case-law cited).

121 Article 41(2)(a) of the Charter of Fundamental Rights provides that the right to good administration includes the right of every person to be heard before an individual measure which would adversely affect him or her is taken.

122 The right to be heard guarantees every person the possibility of making known, in a useful and effective manner, his or her point of view during the administrative procedure and before the adoption of any decision which may adversely affect his or her interests (see judgment of 4 June 2020, *SEAE v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 68 and the case-law cited).

123 The right to be heard has a dual purpose. First, it serves to investigate the case and establish the facts as accurately and correctly as possible and, secondly, it ensures effective protection of the person concerned. The right to be heard is intended in particular to ensure that any decision adversely affecting the person concerned is adopted in full knowledge of the facts and is intended, in particular,

to enable the competent authority to correct an error or the person concerned to put forward information relating to his or her personal situation which militate in favour of the decision being adopted, not being adopted or having a particular content (see judgment of 4 June 2020, *EEAS v De Loecker*, C-187/19 P, EU:C:2020:444, paragraph 69 and the case-law cited).

- 124 The role of the person who submitted the request for assistance alleging harassment consists essentially in his or her cooperation in the proper conduct of the administrative enquiry in order to establish the facts (see judgment of 13 December 2018, *CH v Parliament*, T-83/18, EU:T:2018:935, paragraph 71 and the case-law cited).
- 125 Where, in response to a request for assistance, the administration decides that the matters relied on in support of that request are unfounded and that, consequently, the conduct relied on does not constitute psychological harassment within the meaning of Article 12a of the Staff Regulations, such a decision adversely affects the applicant for assistance within the meaning of Article 41(2)(a) of the Charter of Fundamental Rights (see judgment of 13 December 2018, *CH v Parliament*, T-83/18, EU:T:2018:935, paragraph 78 and the case-law cited).
- 126 In case of rejection of a request for assistance, if the AECE has decided to seek the opinion of an investigator to whom it has entrusted the task of conducting an administrative enquiry and if, in the decision on the request for assistance, it takes into account the opinion thus given by the investigator, that opinion, which may be drawn up in a non-confidential form respecting the anonymity granted to witnesses, must, pursuant to the right to be heard of the applicant for assistance, in principle be brought to the latter's attention, even if the internal rules do not provide for such communication (see, to that effect and by analogy, judgment of 13 December 2018, *CH v Parliament*, T-83/18, EU:T:2018:935, paragraph 85).
- 127 Finally, it should be noted that, in order for the infringement of the right to be heard to lead to the annulment of a decision, it is still necessary to examine whether, in the absence of that irregularity, the procedure could have led to a different result. The assessment of that question must be made in the light of the specific factual and legal circumstances of each case (see, to that effect, judgment of 18 June 2020, *Commission v QR*, C-831/18 P, EU:C:2020:481, paragraphs 105 and 107 and the case-law cited).
- 128 In the present case, the first contested decision did not close the administrative procedure initiated by the Director on 28 September 2017 on the ground that there was no psychological harassment within the meaning of Article 12a(3) of the Staff Regulations in respect of the applicant. The Director acknowledged the existence of 'elements' of harassment on the part of the Head of Unit. The first contested decision is therefore not a decision rejecting a request for assistance similar to those examined in the case-law cited in paragraphs 125 and 126 above.
- 129 However, that decision nonetheless constitutes an act adversely affecting the applicant within the meaning of Article 41(2)(a) of the Charter of Fundamental Rights.
- 130 The first contested decision does not fully endorse the conclusions of the investigation report relating to the applicant's first request for assistance. First, the Director notes the existence of 'a few factual errors' in that report. Secondly, whereas the investigator had concluded that the applicant's request for assistance was well founded, the Director concluded only that there were 'elements' of harassment. During the hearing, ECDC clarified that the addition of the word 'elements' was due to the existence of those factual errors, which were not of major importance, but also had to be taken into account. However, as indicated in paragraphs 96 and 97 above, the qualification of the facts complained of in those terms does not meet the obligations imposed by Article 24 of the Staff Regulations.

- 131 The Director infringed the applicant's right to be heard in that the latter was not able to take a position, before the adoption of the first contested decision, on the 'factual errors' allegedly contained in the investigation report and on any other elements which had led the Director not to agree completely with the conclusions of that report.
- 132 In the absence of that irregularity, the procedure could have led to a different result. In particular, the applicant could have convinced the Director that a different assessment of the facts was possible, so that she could have fully recognised his victim status, as did the investigator.
- 133 By contrast, contrary to the applicant's submission, the Director was not obliged to hear his observations on the reasons, linked to the interest of the service, which led her to accept the Head of Unit's resignation instead of terminating his contract or initiating disciplinary proceedings. The decisions adopted in respect of the Head of Unit were not taken against the applicant within the meaning of Article 41(2)(a) of the Charter of Fundamental Rights.
- 134 It follows from all the foregoing that the first plea in law, alleging a breach of the right to be heard, must be upheld in part.

(3) The second plea in law, alleging breach of the obligation to state reasons

- 135 The applicant claims that the failure to disclose the investigation report, either in its full version or in its non-confidential version, constitutes a breach of the obligation to state reasons for the first contested decision, in so far as that decision is based on that report. The applicant states that he is not aware of the persons who were interviewed by the investigator and of the factual errors in the investigation report which were mentioned in the first contested decision. The finding in that decision that '[the Head of Unit's] way of managing has caused unnecessary stress and anxiety for staff' does not satisfy the obligation to state reasons. Nor does that decision make it possible to understand the reasons which led ECDC to accept the Head of Unit's resignation, with retention of all his financial rights during and after the 10-month notice period, instead of refusing it and initiating disciplinary proceedings against him.
- 136 ECDC emphasises that the second paragraph of Article 25 of the Staff Regulations requires only that reasons be given for decisions adversely affecting an official, which is not the case here, since the first request for assistance was granted. In any event, the applicant was duly informed by the contested decision of the reasons which led ECDC to adopt it. Moreover, in order to protect the confidentiality of witnesses, the investigation report could not be communicated as it stood, especially since the applicant was not the target of the investigation. That was confirmed by the Ombudsman in his decision of 6 June 2019. Finally, the applicant was already aware of the list of persons who had been interviewed.
- 137 As is apparent from paragraph 76 above, the first contested decision constitutes an act adversely affecting an official. It must therefore be reasoned to the requisite legal standard, in accordance with the second paragraph of Article 25 of the Staff Regulations, which is merely a restatement of the general obligation laid down by Article 296 TFEU.
- 138 The purpose of the obligation to state reasons for a decision adversely affecting an official is to provide the person concerned with sufficient information to know whether the decision is well founded or whether it is vitiated by a defect which would allow its legality to be challenged and to enable the EU judicature to review the legality of the contested decision. The extent of the obligation to state reasons must, in each case, be assessed not only in the light of the contested decision, but also in the light of the specific circumstances surrounding that decision (see judgment of 25 October 2007, *Lo Giudice v Commission*, T-154/05, EU:T:2007:322, paragraphs 160 and 161 and the case-law cited).

- 139 While the case-law allows a statement of reasons to be given by reference to a report or opinion which itself gives reasons, it is necessary for such a report or opinion actually to be communicated to the person concerned together with the act complained of (see, to that effect, judgment of 11 July 2013, *Tzirani v Commission*, F-46/11, EU:F:2013:115, paragraph 152 and the case-law cited).
- 140 The administration may make up for an inadequate statement of reasons, but not a total absence of reasons, by providing adequate reasons at the stage of the reply to the complaint, or by providing additional details in the course of the proceedings (see, to that effect, judgment of 2 March 2010, *Doktor v Council*, T-248/08 P, EU:T:2010:57, paragraph 93 and the case-law cited).
- 141 However, in the specific context of an investigation initiated on the basis of a request for assistance under Article 24 of the Staff Regulations and intended to establish the reality of acts of harassment of which a member of staff considers that he or she has been the victim, account must be taken of the obligation incumbent on the institution to respond to the official who makes such a request with the speed and solicitude required in the management of such a serious situation. Therefore, 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, so that a decision which, in that context, is limited to providing only the beginnings of a statement of reasons cannot meet the requirements imposed by that provision, thus obliging the person concerned to lodge a complaint in order to obtain a statement of reasons for the decision complained of which complies with the requirements of that provision (see, to that effect, judgment of 11 July 2013 in Case F-46/11, *Tzirani v Commission*, EU: F:2013:115, paragraphs 164 and 165 and the case-law cited).
- 142 That finding cannot, however, prejudice the possibility for the institutions to include, in the decision rejecting the complaint, details of the reasons given by the administration, nor the possibility for the Court to take those details into consideration when examining the pleas challenging the legality of the decision (see judgment of 11 July 2013, *Tzirani v Commission*, F-46/11, EU:F:2013:115, paragraph 167 and the case-law cited).
- 143 As regards the statement of reasons for the first contested decision, it should be noted that that decision does not explicitly address any of the situations mentioned by the applicant in his first request for assistance, but merely refers to the factual elements described in the investigation report, to which the applicant had not, at that time, obtained any access, and to the ‘information available to [the Director]’, without giving details. That decision also mentions the existence of ‘factual errors’ in the investigation report, without describing them, and of ‘issues’ on which the Head of Unit ‘needed to act’, again without detailing them. Finally, the Director mentions, without elaborating, that she was considering ‘appropriate measures’, which were not adopted due to the Head of Unit’s resignation. In the decision rejecting the complaint, the Director did not provide any further reasoning regarding those aspects.
- 144 It follows therefrom that the first contested decision, as supplemented by the decision rejecting the complaint, does not state the reasons for certain essential aspects, referred to in paragraph 143 above, with the result that the applicant was unable to challenge the merits of those aspects.
- 145 In those circumstances, the second plea in law must be upheld, without the clarifications which ECDC was able to provide before the Court being such as to remedy that lack of reasoning.

(d) Conclusion on the application for annulment of the first contested decision

- 146 In the light of all the foregoing considerations, the first contested decision, as supplemented by the decision rejecting the complaint, must be regarded as having been adopted in infringement of Article 24 of the Staff Regulations, of the applicant’s right to be heard and the obligation to state reasons.

2. The application for annulment of the second contested decision

- 147 By the second contested decision, ECDC rejected the contested request for access, seeking the investigation report and all the documents on the basis of which the Director had taken the first contested decision, including those on the basis of which she had considered that the investigation report contained ‘a few factual errors’ (see paragraph 29 above).
- 148 In his application of 30 May 2018, the applicant stated that, in so far as he was adversely affected by the first contested decision, he should have access to those documents, in accordance with Article 41 of the Charter of Fundamental Rights, particularly as he had had to submit the second request for assistance on 10 April 2018 as a result of actions by the Head of Unit which had allegedly taken place during and after the drafting of the investigation report.
- 149 In the second contested decision, the Director found that the applicant’s interest could not be affected by the first contested decision, since the first request for assistance had not been rejected as unfounded. Furthermore, the second request for assistance could not justify access to the investigation report either, as no decision had yet been taken on that request. The Director also indicated that the applicant had been given the opportunity to present his views during the investigation. Finally, she recalled, in substance, that, according to the case-law on the scope of the right of defence, the situation of a person who had submitted a request for assistance in relation to psychological harassment could not be equated with that of the person who was the subject of the request and that the procedural rights which had to be granted to the latter differed from those, which were more limited, available to the applicant for assistance in the administrative proceedings. In that respect, the Director pointed out that the right of access to the file, based on the Charter of Fundamental Rights, had even been denied to complainants in cases where the competent authority had concluded that no harassment had occurred.
- 150 In the decision rejecting the complaint, the Director added that the applicant had been given access to a non-confidential version of the investigation report on 12 September 2018 and that he had been given access to his own personal data contained in that report, in accordance with Article 13 of Regulation No 45/2001. The Director clarified that full access to that report was not granted due to the protection of the confidentiality of the interviews with witnesses and with the Head of Unit himself, the sensitivity of the issue and the need to preserve ECDC’s ability to carry out investigations.
- 151 The applicant puts forward a single plea in law against the second contested decision, as supplemented by the decision rejecting the complaint. That plea alleges infringement of Article 41(2)(b) of the Charter of Fundamental Rights. During the hearing, the applicant withdrew the second complaint which he had raised in the application, in an unsubstantiated manner, and which was based on an infringement of Article 13 of Regulation No 45/2001.
- 152 In support of his single plea in law, the applicant claims that, contrary to what was alleged in the second contested decision, the first contested decision constitutes an act adversely affecting him, which further justifies the need to have full access to the investigation report. Furthermore, the exceptions provided for in Article 41(2)(b) of the Charter of Fundamental Rights and Article 20 of Regulation No 45/2001 were no longer applicable once the investigation had been closed. In addition, the applicant points out that some witnesses agreed that he should have access to the minutes of their hearings, so that the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 could not be relied on either. Moreover, the specific and actual harm to protected interests had not been demonstrated. In those circumstances, the very limited access to the investigation report which the applicant had on 12 September 2018 does not, in his view, amount to lawful access in accordance with Article 41 of the Charter of Fundamental Rights. Finally, the applicant states that he does not share the conclusions of the Ombudsman’s decision of 6 June 2019, in particular as regards the analysis

concerning the protection of personal data. During the hearing, the applicant added that the testimonies had already been anonymised in the version of the investigation report that had been sent to the Director.

- 153 ECDC replies that, since the first contested decision does not adversely affect the applicant, the reasons for the second contested decision are still valid. It points out that Article 41(2)(b) of the Charter of Fundamental Rights requires that the legitimate interests of confidentiality be respected. Article 20 of Regulation No 45/2001 and Article 8 of the Charter of Fundamental Rights legitimise restrictions on the applicant's procedural rights in that respect. Moreover, the fact that the investigation is now closed would not alter the interest of either the witnesses or the Head of Unit. The latter had moreover provided concrete evidence that the disclosure of the data contained in the investigation report could affect his rights. Furthermore, ECDC submits that the applicant was given the opportunity to consult a non-confidential version of the report on 12 September 2018. The Ombudsman confirmed that ECDC had correctly and sufficiently motivated the refusal to grant full access to that report. Finally, as regards the anonymisation of the testimonies in the investigation report provided to the Director, ECDC stressed that that was not sufficient, since, due to the size of ECDC and the scope of the testimonies, it would be easy to identify the witnesses upon reading the report.
- 154 As a preliminary point, it should be noted that the Ombudsman's decision of 6 June 2019 does not relate to the second contested decision, but to the second letter of 20 June 2018, referred to in paragraph 32 above. That letter was sent to the applicant in response to a previous request for access to the investigation report, in so far as that request was based on Regulations Nos 1049/2001 and 45/2001. The Ombudsman therefore examined whether, in the light of those regulations, ECDC had correctly and sufficiently reasoned its decision to refuse full public access to the investigation report in order to protect the privacy and integrity of the persons concerned. The Ombudsman therefore did not examine whether those interests justified granting the applicant only restricted access to the investigation report in the context of his exercise of his right of access to the file guaranteed by Article 41(2)(b) of the Charter of Fundamental Rights.
- 155 The right to good administration is enshrined in Article 41 of the Charter of Fundamental Rights, which is one of the guarantees conferred by the legal order of the EU in administrative procedures (see judgment of 19 September 2018, *Selimovic v Parliament*, T-61/17, not published, EU:T:2018:565, paragraph 67 and the case-law cited). Article 41(2)(b) of that Charter enshrines the right of access of any person to the file concerning him or her, while respecting the legitimate interests of confidentiality and professional and business secrecy. That right of access to the file implies that the institution in question must give the person concerned the opportunity to examine all the documents in the investigation file which are likely to be relevant to his or her defence (see judgment of 19 September 2018, *Selimovic v Parliament*, T-61/17, not published, EU:T:2018:565, paragraph 78 and the case-law cited).
- 156 As noted in paragraph 129 above, the first contested decision constitutes an act adversely affecting the applicant, contrary to what ECDC maintains. It is therefore necessary to examine whether the other reasons put forward by the Director in the second contested decision, the grounds of which were supplemented by the decision rejecting the complaint, justify the refusal of access, in whole or in part, to the documents requested.
- 157 In response to a measure of organisation of procedure of the Court, ECDC produced the non-confidential version of the investigation report, which was made available to the applicant on 12 September 2018.
- 158 Following an investigative measure, ECDC also produced the confidential version of the investigation report, access to which was refused by the second contested decision, as well as the other documents which the Director had taken into account in adopting the first contested decision. Those documents

are, first, the applicant's first request for assistance, secondly, the additional information form sent by the applicant on 14 July 2017, thirdly, an email of 17 January 2018 from the Head of Unit to the Director, in which the Head of Unit gave her his comments on the draft investigation report that had been sent to him, fourthly, an email of 27 July 2018 from the investigator to the Director concerning factual errors in the investigation report and, fifthly, the Director's reply to that email, dated 3 August 2018.

- 159 As regards the investigation report, it is clear from the documents produced by ECDC before the Court that it was drafted in accordance with the criteria laid down in Article 4(8) of ECDC Implementing Rule No 29 on the conduct of administrative investigations and disciplinary procedures. According to that provision, 'the report shall set out the facts and circumstances in question; it shall establish whether the rules and procedures applicable to the situations have been followed and shall determine any individual responsibility, having regard to aggravating or mitigating circumstances'. The same provision also states that 'copies of all the relevant documents and records of interviews shall be attached to the report'. Following those instructions, the report was structured in seven unnumbered sections.
- 160 In response to a question put by the Court during the hearing, ECDC clarified that the personal data contained in the investigation report which were communicated to the applicant by the second letter of 20 June 2018, on the basis of Article 13 of Regulation No 45/2001 (see paragraph 32 above), are only the complaints which the applicant had himself formulated in the context of his first request for assistance.
- 161 It follows from the non-confidential version of the investigation report produced by ECDC and from the clarifications provided by the latter that the applicant had access only to those parts of the report which referred to his own complaints and to those which contain general considerations on the applicable legal provisions and the manner in which the investigation had been conducted. By contrast, the substance of the report was completely concealed. In particular, the applicant did not have access to the last three sections of the report, which include, first of all, the description of the facts denounced in the requests for assistance submitted by the applicant and another ECDC staff member, in the light also of the testimonies collected, including the statements of the Head of Unit (fifth section), then, the investigator's individual conclusions concerning each request for assistance (sixth section) and, finally, his general conclusions on the investigation (seventh section).
- 162 It has been held that the transmission of a copy of the reports drawn up at the end of the administrative investigation, where appropriate in a non-confidential version, is necessary in the light of the principle of good administration guaranteed by Article 41 of the Charter of Fundamental Rights and the duty to assist, which imply that the competent authority must inform the persons concerned of the outcome of their request for assistance, all the more so where, as in the present case, the report acknowledges the existence of psychological harassment (see, to that effect, judgment of 3 October 2019, *DQ and Others v Parliament*, T-730/18, EU:T:2019:725, paragraph 109).
- 163 However, as ECDC points out, the right of access to the file is not absolute. Article 41(2)(b) of the Charter of Fundamental Rights guarantees this right under two conditions. First, a person's right of access is limited to 'his or her file'. Secondly, access must be provided with due respect for 'the legitimate interests of confidentiality and of professional and business secrecy'.
- 164 As regards the implications of the first condition in the present case, it should be noted that the investigation report relates not only to the applicant's first request for assistance, but also to that of another applicant for assistance. Furthermore, the investigator also referred to the personal situation of other ECDC staff members in the sixth and seventh sections of his report in relation to 'aggravating circumstances'.

- 165 When questioned on that point during the hearing, the applicant did not rule out the possibility that he might have a right of access to those parts of the investigation report which concern the situation of third parties. However, the right of access to the file of which he avails himself, on the basis of Article 41(2)(b) of the Charter of Fundamental Rights, guarantees access only to the file which concerns him.
- 166 As regards the second condition mentioned in paragraph 163 above, relating to the protection of the legitimate interests of confidentiality, also guaranteed by Article 41(2)(b) of the Charter of Fundamental Rights, it has been held that, in the context of a complaint of psychological harassment, the confidentiality of the evidence gathered must be guaranteed, save in special circumstances, including during the litigation procedure, in so far as the prospect of a possible lifting of that confidentiality at the litigation stage may prevent the holding of neutral and objective investigations benefiting from the unrestrained cooperation of the persons called as witnesses (see judgment of 19 September 2018, *Selimovic v Parliament*, T-61/17, not published, EU: T:2018:565, paragraph 79 and case-law cited).
- 167 However, in the present case, ECDC did not merely conceal the parts of the investigation report relating to the testimonies, but concealed the entire content of the investigator's analysis, including his conclusions on the applicant's first request for assistance, which cannot be justified by the protection of the legitimate interests of witness confidentiality and the proper conduct of investigations.
- 168 Furthermore, the investigator had already taken steps to ensure the anonymity of witnesses in the investigation report. In particular, he always gave the persons who had agreed to be interviewed the opportunity to sign or not to sign the record of their interview. For those who chose not to sign, the information collected from them was not used in the report in a way that would have identified them. For those who agreed to sign the report, their name, together with their statement in the investigation report, was replaced by a code. Even if, as ECDC alleges, because of the size of the report, this anonymisation technique had not been considered sufficient to protect their identity, the possibility of disclosing the substance of their testimonies in the form of a summary or of masking certain parts of the content of the testimonies could have been envisaged (see, to that effect, judgment of 25 June 2020, *HF v Parliament*, C-570/18 P, EU:C:2020:490, paragraph 66 and the case-law cited). However, none of those techniques was considered by ECDC.
- 169 As regards the other documents referred to in paragraph 158 above, to which access was also refused by the second contested decision, it should be noted that the first request for assistance and the additional information form were drafted by the applicant himself. As regards the email sent on 17 January 2018 by the Head of Unit to the Director, the latter should have forwarded to the applicant the non-confidential parts of that email which related to the facts denounced in his first request for assistance, with due regard to the confidentiality of witnesses. Finally, as regards the exchange of emails between the Director and the investigator, it must be noted that it took place between 27 July and 3 August 2018 and was therefore subsequent to the adoption of the first contested decision, so that it does not fall within the scope of the contested request for access.
- 170 It follows from all the foregoing that the applicant's single plea in law is partially well founded.
- 171 The second contested decision, as supplemented by the decision rejecting the complaint, should therefore be annulled in so far as it refused the applicant access to the non-confidential parts of the investigation report and the Head of Unit's email of 17 January 2018 which concerned him (see paragraphs 164 and 169 above).

C. The claims for compensation

- 172 The applicant requests the Court to order ECDC to pay compensation for the non-material damage which he allegedly suffered, assessed *ex aequo et bono* at the sum of EUR 40 000.
- 173 In support of his claim, the applicant argues that the failure of ECDC to fully recognise his status as a victim and the lack of disciplinary action against the Head of Unit caused him non-material damage.
- 174 In that regard, the applicant points out that, for an uninterrupted period of five years, he was exposed to a very high level of stress, which caused serious health problems resulting in anxiety, blood pressure problems and a decline in his self-confidence. The fact that ECDC decided, in the context of the first contested decision, not to impose a disciplinary sanction on the Head of Unit and that the Director did not take any protective measures following his first request for assistance, reinforced the applicant's feeling that the Head of Unit could act with impunity.
- 175 The damage was further aggravated by the fact that the Director tried by all means to deny him access to key elements and documents on which she had based her decision in the first contested decision on the outcome of his first request for assistance. Transparency and clarity are essential to try to restore confidence that the employer effectively condemns infringements of rights under the Staff Regulations, even when those infringements can be attributed to management staff.
- 176 The four years which elapsed between the beginning of the Head of Unit's conduct towards the applicant and the submission of the first request for assistance constituted a reasonable period of time, taking into account the time necessary to become aware of the situation, his state of exhaustion and the expiry of the renewal of his contract in 2014. The applicant adds that, in any event, he had already, personally and through the Staff Committee, alerted the administration to the Head of Unit's conduct. He had not stopped asking for help for years, without really being heard and even less understood.
- 177 ECDC contends that, since the submission of the applicant's first request for assistance, it has complied with its duty of care and the principle of good administration by proceeding to open the administrative investigation after obtaining authorisation from OLAF, adopting protective measures, acknowledging harassment and accepting the Head of Unit's resignation in the interest of the service. The very high level of stress and anxiety was only reported by the applicant on 2 July 2018, in the context of his complaint. ECDC maintains that, had it been aware earlier that the applicant was feeling harassed, it would have taken appropriate action, as it did immediately after the first request for assistance was made. With regard to the date on which the latter was submitted, ECDC states that it did not claim that it was time-barred.
- 178 As to the reality of the damage, ECDC argues that no evidence has been provided, as the medical certificate attached to the application has, in its view, very little informative value.
- 179 Finally, as regards the causal link between the alleged fault and the non-material damage, it has not been demonstrated either.
- 180 First of all, the scope of the applicant's claim for compensation should be clarified.
- 181 As indicated in paragraph 36 above, on 11 October 2018, the applicant and other ECDC staff members submitted another claim for compensation, on the basis of Article 90(1) of the Staff Regulations. In that joint application, the applicant requested the sum of EUR 356 400 for the material and non-material damage he allegedly suffered between 2012 and 2018, during which time ECDC failed to provide an appropriate working environment and was slow to react to the Head of Unit's conduct. That claim was rejected by the Director and was the subject, successively, of a complaint and an

action before the Court, registered under number T-864/19. During the hearing, the applicant stated that the claim for compensation in the present case was different from that in Case T-864/19. There is therefore no need to rule on the damage claimed by the applicant in the latter application.

- 182 It is apparent from the application that the non-material damage relied on by the applicant in the present case arises from the first and second contested decisions. In particular, the applicant submits that the first contested decision closed the investigation without fully recognising his status as a victim and without imposing a disciplinary penalty on the Head of Unit, because of his resignation. That damage was aggravated by the denial of access to the investigation report contained in the second contested decision.
- 183 Consequently, the applicant seeks compensation for the non-material damage resulting from the illegalities complained of in the third plea in law in support of the application for annulment of the first contested decision and in the single plea in law invoked against the second contested decision.
- 184 As can be seen from paragraphs 116 and 170 above, those pleas in law were partially accepted. It was found that, first, ECDC had failed to establish the facts fully following the investigation report and to inform the applicant of the action taken on his first request for assistance, in breach of Article 24 of the Staff Regulations. Secondly, the restricted access to the investigation report that was granted to the applicant was not in accordance with Article 41(2)(b) of the Charter of Fundamental Rights.
- 185 According to settled case-law, the annulment of an unlawful act constitutes, in itself, adequate and, in principle, sufficient reparation for any non-material damage which that act may have caused. That cannot, however, be the case where the applicant demonstrates that he has suffered non-material damage which can be separated from the illegality justifying the annulment and which cannot be fully remedied by that annulment (see judgment of 13 July 2018, *Curto v Parliament*, T-275/17, EU:T:2018:479, paragraph 114 and the case-law cited).
- 186 That is the case, first, where the annulled measure contains an explicitly negative assessment of the applicant's abilities likely to cause him or her prejudice, secondly, where the irregularity committed is particularly serious and, thirdly, where the annulment is deprived of any useful effect, thus not being able in itself to constitute adequate and sufficient reparation for any non-material damage caused by the contested measure (see judgment of 23 October 2012, *Strack v Commission*, F-44/05 RENV, EU:F:2012:144, paragraph 128 and the case-law cited).
- 187 Furthermore, according to the case-law, the non-material nature of the damage allegedly suffered is not capable of reversing the burden of proof of the existence and extent of the damage, which lies with the applicant. The EU's liability is engaged only if the applicant has succeeded in demonstrating the reality of its damage (see judgment of 29 April 2015, *CC v Parliament*, T-457/13 P, EU:T:2015:240, paragraph 49 and the case-law cited).
- 188 In the present case, the applicant has not demonstrated the existence of non-material damage which can be separated from the unlawfulness justifying the annulment of the first and second contested decisions, which could not be made good in full by that annulment. At the hearing, he confined himself, in that regard, to reiterating that the Head of Unit had benefited from a situation of impunity and that the anxiety and suffering to which he had been subjected remained a reality, especially after the efforts he had had to make in order to obtain access to what was essential for him, namely the investigation report. However, the applicant did not explain why that damage could not be remedied by annulling the first and second contested decisions.
- 189 In the light of the above, the claim for compensation for non-material damage arising from those decisions must be rejected.

IV. Costs

¹⁹⁰ Under Article 134(3) of the Rules of Procedure, the parties are to bear their own costs, where each party succeeds on some and fails on other heads. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

¹⁹¹ In the present case, it is appropriate, pursuant to that provision, to decide that, in addition to bearing its own costs, ECDC shall bear three quarters of the applicant's costs and that the applicant shall bear one quarter of its own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

- 1. Annuls the decision of the European Centre for Disease Prevention and Control (ECDC) of 18 May 2018 adopted in response to the request for assistance submitted by AI on 20 June 2017;**
- 2. Annuls the decision of the ECDC of 20 June 2018 in so far as it refused AI access to the non-confidential parts of the investigation report relating to his request for assistance of 20 June 2017 and of A's email of 17 January 2018 that concern him ;**
- 3. Annuls the ECDC decision of 26 October 2018 rejecting AI's complaint of 2 July 2018 ;**
- 4. Dismisses the claim for damages;**
- 5. Orders ECDC to bear, in addition to its own costs, three-quarters of the costs incurred by AI;**
- 6. Orders AI to bear one quarter of his own costs.**

da Silva Passos

Truchot

Sampol Pucurull

Delivered in open court in Luxembourg on 14 July 2021.

[Signatures]