

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

18 September 2012 (*)

(Civil service – Duty of assistance – Article 24 of the Staff Regulations – Psychological harassment –
Administrative inquiry)

In Case F-58/10,

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

Timo Allgeier, member of the temporary staff of the European Union Agency for Fundamental Rights, residing in Vienna (Austria), represented by L. Levi and M. Vandebussche, lawyers,

applicant,

v

European Union Agency for Fundamental Rights (FRA), represented by M. Kjærøum, acting as Agent, assisted by B. Wägenbaur, lawyer,

defendant,

THE CIVIL SERVICE TRIBUNAL
(First Chamber),

composed of H. Kreppel (Rapporteur), President, E. Perillo and R. Barents, Judges,

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 13 December 2011,

gives the following

Judgment

- 1 By application received at the Registry of the Civil Service Tribunal on 16 July 2010, Mr Allgeier seeks annulment of the decision of the European Union Agency for Fundamental Rights ('the FRA' or 'the Agency') rejecting his request for assistance, and an order that the FRA pay damages to him.

Legal context

- 2 Article 12a(3) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides that "[p]sychological harassment" means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person'.

3 Under Article 24 of the Staff Regulations:

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

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

Background to the dispute

4 On 1 January 2002, the applicant was recruited by the European Monitoring Centre on Racism and Xenophobia (EUMC) under a four-year temporary employment contract, which was renewed, from 1 January 2006, for a further period of four years. Mr Allgeier was first assigned to Unit 2 ‘Research and Networks’ primarily to ensure the management of the procurement procedures and European racism and xenophobia information network contracts.

5 On 22 September 2005, the applicant was transferred to Unit 1 (Administration) (‘the Administration Department’), as part of the centralisation of all public procurement procedures. At the time, the head of that unit was Mr M., one of the two members of staff who would, at a later stage, be accused by Mr Allgeier of psychological harassment. Mr M. was also, at that date, Deputy Director of the EUMC.

6 Within the Administration Department, the applicant, as Procurement Assistant, was responsible for all matters relating to public procurement.

7 Mr A., the other member of staff accused by the applicant of psychological harassment, was recruited by the EUMC in 2005 and joined the Administration Department as Senior Procurement Officer.

8 In December 2005, the EUMC negotiated with a company, S., a contract for the supply of a private branch exchange for EUR 34 391.43. On 23 December 2005, the contract signed by the EUMC was sent to S. for signing.

9 In January 2006, S. commenced performance of the contract, although it had not yet signed it. The EUMC took the view that the company had accepted its terms and therefore carried appropriations in the fixed sum of EUR 34 391.43 over from 2005 to 2006.

10 In March 2006, the EUMC and S. decided that the contract would be amended by an addendum.

11 On 19 April 2006, the applicant, accompanied by one of his colleagues, visited S.’s premises and asked the latter to sign both the contract and the addendum, and to date them as 23 December 2005 and 15 January 2006 respectively. According to the applicant, that step was taken at the specific request of Mr M. and because he wanted to regularise the carry-over of appropriations already completed on the basis of the contract.

12 In April 2006, on the basis of Article 22a of the Staff Regulations, the applicant indicated to Mr M. and Mr A. that that carry-over of appropriations had no legal basis since the contract had not been signed by all the contracting parties as at 31 December 2005. The applicant added that backdating the contract constituted a fraud intended to disguise the illegality of the carry-over of appropriations.

13 Since the position of the applicant and that of Mr M. and Mr A. concerning the regularity of the carry-over of appropriations and the dating of the contract diverged, the applicant informed the internal auditor of the EUMC of the situation.

- 14 During a meeting held on 28 April 2006, the applicant also informed Ms Winkler, Director of the EUMC, of the pressure to which he had been subjected to be present at S.'s premises and to ensure that the latter backdated the contract.
- 15 On 22 May 2006, the Director of the EUMC decided to cancel the contract with S. on the grounds that the contract had been backdated by S. in the presence of two EUMC agents and that the entering of an inaccurate date constituted an irregularity.
- 16 However, on learning that the date indicated on the contract could be amended, the Director of the EUMC eventually agreed, on 6 June 2006, not to cancel the contract and ordered that the dates of signature affixed by S. to the contract and to the addendum be amended in order to reflect the true dates.
- 17 On the same date, 6 June 2006, the applicant went again to the premises of S. so that the latter could amend the dates of the signature. The representatives of S. then affixed the date of 19 April 2006 to the contract and that of 6 June 2006 to the addendum.
- 18 The applicant claims that, after 6 June 2006, his relationship with Mr M. and Mr A. deteriorated significantly. According to the applicant, the fact that he had been reluctant to backdate the contract negotiated with S. and that he had informed the Director of the EUMC of what he considered to be a fraudulent practice induced Mr M. and Mr A. to harass him psychologically and, in particular, to relieve him of the assignments for which he had been recruited and to isolate him within the EUMC.
- 19 On 1 March 2007, the FRA succeeded the EUMC.
- 20 On 25 June 2007, the European Anti-Fraud Office (OLAF) received an anonymous letter complaining of irregularities committed by Mr M. in the course of his duties. The alleged irregularities concerned, in particular, recruitment procedures, backdated signatures in supply agreements, the illegal granting of education allowances to certain agents and unsound financial management.
- 21 In July 2007, following the resignation of the Director of the FRA, Mr M. became Interim Director of the Agency.
- 22 On 28 November 2007, OLAF opened an internal inquiry concerning the alleged irregularities complained of in the letter of 25 June 2007. From 15 to 17 January 2008, OLAF carried out a visit to the premises of the FRA.
- 23 On 1 June 2008, Mr Kjærum, having until then been the Executive Director of the Danish Institute for Human Rights (Institute for Menneskerettigheder, 'the IMR'), was appointed Director of the FRA.
- 24 By a note dated 23 June 2008, the applicant made a request for assistance to Mr Kjærum under Article 24 of the Staff Regulations. In that note, he explained that he had been subjected to psychological harassment by Mr M. and Mr A. and asked the FRA to take the measures necessary to bring that situation to an end.
- 25 In response to that request, the Director of the FRA decided, on 7 July 2008, to transfer the applicant from Unit 1 'Administration' to Unit 3 'Communications and External Relations'. Furthermore, the Director met the applicant on 7, 8 and 11 July 2008, without his lawyers, to examine whether there was an alternative to the formal procedure provided for in Article 24 of the Staff Regulations. That proposal was rejected by the applicant.
- 26 By letter of 18 July 2008 to the Director of the FRA, the applicant's lawyers confirmed that the applicant intended to maintain his request for assistance and asked that the procedural rules and details of the procedure governing the administrative inquiry be sent to them. The applicant's lawyers also requested that the FRA cover their fees.

- 27 On that same date, 18 July 2008, the applicant was informed by the Director of the FRA of his decision to open an inquiry.
- 28 At the end of July 2008, the applicant was placed on sick leave. The leave was extended until mid-September 2009.
- 29 By letter of 22 October 2008, the Director of the FRA informed the applicant's lawyers of his decision to appoint Mr Jensen to conduct the inquiry ('the investigator'). On that date, the investigator was serving as Chairman of the Board of the IMR.
- 30 By letter of 18 November 2008, the applicant raised a number of questions concerning the inquiry, in particular the question whether the witnesses should be granted anonymity.
- 31 By letter of 16 January 2009, the Director of the FRA answered the questions raised by the applicant in his letter of 18 November 2008. He pointed out that the witnesses were not entitled to anonymity, unless the circumstances of the case clearly indicated the need for such anonymity.
- 32 On 20 February 2009, the FRA sent the applicant a document entitled 'Legal Framework of the Administrative Inquiry', drawn up by the Director after consultation with the investigator.
- 33 Three hearings were organised by the investigator, the first on 2 and 3 March 2009, the second on 23, 24 and 25 March 2009 and the third on 23 and 24 April 2009. At the first hearing, the applicant and Mr M. and Mr A. were heard by the investigator. During the second hearing, in addition to the applicant and Mr M., the investigator heard three witnesses whose names had been suggested by Mr M. as well as two other members of staff whose evidence he considered necessary. Finally, at the third hearing, the applicant and Mr M. were heard along with three other members of staff.
- 34 In a report drawn up on 22 June 2009 on completion of its inquiry, OLAF concluded that the allegations contained in the letter of 25 June 2007 were unfounded and recommended that no disciplinary or legal measure be taken following that inquiry. The report was communicated to the Director of the FRA by letter of 25 June 2009.
- 35 On 16 July 2009, the investigator drew up a draft investigative report. In that report, the investigator concluded that there was no psychological harassment. He also suggested that the FRA address a warning to Mr M., in view of his responsibility for the existence of an 'intense atmosphere of fear' in the Administration Department. The report was communicated to the applicant, Mr M. and Mr A.
- 36 On 31 August 2009, the applicant submitted his written observations on the draft report.
- 37 On 15 September 2009, the investigator drew up the final version of the investigation report ('the final report'). The investigator confirmed his position that there was no psychological harassment.
- 38 On 16 September 2009, the final report was communicated to the applicant to enable him to submit any relevant observations, which he did on 22 September 2009.
- 39 By decision of 16 October 2009, notified to the applicant on the same day, the Director of the FRA decided that no disciplinary proceedings would be brought against Mr M. and Mr A. ('the contested decision'). The Director accepted that relations between the applicant, on the one hand, and Mr M. and Mr A., on the other, had been confrontational, as a result, inter alia, of a 'a clash of personalities' and 'different approaches concerning social interactions', and that Mr M. could have attempted to resolve the conflict differently, in order to defuse the tensions and to create a supportive working environment for the applicant. However, the Director none the less pointed out that there was no evidence of psychological harassment. In the light of the circumstances set out above, the Director finally took the view that the costs reasonably incurred by the applicant in the context of the inquiry should be reimbursed to him.

- 40 In its written pleadings, the FRA claims that, on 16 October 2009, the Director of the FRA met in turn Mr A. and Mr M. in order to remind them of the principles of sound administration to be applied in the service and the need for them to improve the daily application of those principles.
- 41 As from 1 January 2010, the applicant's contract was renewed for an indefinite duration.
- 42 By note dated 14 January 2010, the applicant lodged a complaint against the contested decision.
- 43 By decision of 6 April 2010, notified on 7 April 2010, the Director of the FRA rejected that complaint.

Procedure and forms of order sought by the parties

- 44 The present action was brought on 16 July 2010.
- 45 The applicant claims that the Court should:
- annul the contested decision;
 - if necessary, annul the decision of 6 April 2010 rejecting the complaint;
 - declare that he had been subjected to psychological harassment by Mr M. and Mr A. with all the disciplinary consequences which that entails; or, in the alternative, (i) open a new, fair, independent and impartial administrative inquiry, including the creation of a panel of experts to conduct the administrative inquiry and (ii) adopt all the necessary measures in order to allow a fair inquiry free from any possible pressure and interference;
 - grant him compensation for material damage, provisionally set at EUR 71 823.23;
 - grant him the sum of EUR 85 000 to make good the non-material damage resulting from the way the entire procedure was conducted and the decision reached;
 - order the FRA to pay the costs.
- 46 The FRA claims that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.
- 47 The proposal made by the Judge-Rapporteur to the parties for an amicable settlement of the dispute was unsuccessful.

Law

The claim seeking annulment of the decision of 6 April 2010 rejecting the complaint

- 48 According to settled case-law, a claim for annulment formally directed against the decision rejecting a complaint has the effect, where that decision lacks any independent content, of bringing before the Tribunal the act against which the complaint was submitted (see, to that effect, the judgment of 17 January 1989 in Case 293/87 *Vainker v Parliament*, paragraph 8; the judgment of 9 July 2009 in Case F-104/07 *Hoppenbrouwers v Commission*, paragraph 31). In those circumstances, since the decision of 6 April 2010 rejecting the complaint is devoid of any independent content, the action for annulment must be regarded as directed only against the contested decision.

The claim that the Tribunal should declare that the applicant had been subjected to psychological harassment

49 As the real object of this claim is to have the Court uphold some of the pleas put forward in support of the claim for annulment of the contested decision, it is inadmissible (see, to that effect, the judgment of 30 November 1993 in Case T-15/93 *Vienna v Parliament*, paragraph 13).

The claim for annulment of the contested decision

50 In support of the claim for annulment of the contested decision, the applicant raises a number of pleas, alleging, inter alia:

- a lack of impartiality on the part of the investigator;
- the investigator's refusal to guarantee the anonymity of the witnesses;
- an error of law concerning the interpretation of the legal definition of psychological harassment;
- a manifest error of assessment on the part of the investigator in his refusal to record the existence of psychological harassment.

51 It is appropriate to consider first the plea alleging a lack of impartiality on the part of the investigator and the plea alleging that the refusal of the latter to guarantee the anonymity of the witnesses was illegal.

Arguments of the parties

52 With regard to the first plea, alleging the investigator's lack of impartiality, the applicant explains that the investigator, when he was appointed to conduct the inquiry, was serving as the Chairman of the Board of the IMR. Before being appointed on 1 June 2008 as Director of the FRA, Mr Kjærøum was the Executive Director of the IMR. The applicant adds that the IMR concluded an important contract with the FRA for the submission of information concerning discrimination based on sexual orientation, and that the investigator and Mr Kjærøum were co-authors of an academic work. Thus, according to the applicant, the investigator had an interest in safeguarding the image of the FRA and clearing it of all charges of psychological harassment. The applicant adds that the investigator's subjective impartiality is also questionable, as is evidenced, in particular, by the lack of detail in the final report.

53 Concerning the second plea alleging that the investigator's refusal to guarantee the anonymity of the witnesses was illegal, the applicant claims that such a refusal, contrary to the 'Legal Framework of the Administrative Inquiry', led certain persons to refuse to give evidence, or to give evidence in an insufficiently frank manner for fear of reprisals.

54 In its defence, the FRA contends that the above pleas should be rejected.

55 The FRA maintains, first, that none of the documents in the file before the Court gives grounds for suspecting a lack of impartiality on the part of the investigator either towards the applicant or the members of staff accused by the applicant. In particular, neither the fact that the investigator and the Director had had a professional relationship in the past in the context of the IMR nor the existence of a business relationship between the FRA and that institute, suggest any grounds for doubt in that regard.

56 The FRA then observes that the facts of the case did not require the anonymity of witnesses and adds that, in any event, in the light of the small size of the Agency, anonymity would not have constituted a guarantee for the witnesses.

Findings of the Court

- 57 As a preliminary point, it must be observed that, for the purposes of adopting the contested decision, the Director essentially relied both on the evidence collected by the investigator during the inquiry and on the latter's findings in the final report. This is illustrated by the fact that, in the wording of the decision at issue, the Director expressly dismissed the complaint of psychological harassment by referring to the case 'as presented by the investigator in the final report'.
- 58 It is therefore necessary to establish whether, as the applicant contends, the inquiry was conducted in an irregular manner.
- The lack of impartiality on the part of the investigator
- 59 The applicant questions both the objective and subjective impartiality of the investigator. According to Mr Allgeier, not only was the investigator, by virtue of his position in the IMR, objectively in a position capable of raising doubts as to his independence, but, furthermore, he also lacked impartiality in the actual conduct of the inquiry.
- 60 In that connection, as regards the objective impartiality of the investigator, there is no indication in any of the documents and nor is it alleged by the applicant that the investigator had a close relationship with the members of staff directly involved in the request for assistance, that is the applicant and the two members of staff accused by the applicant of psychological harassment. Furthermore, the mere fact that Mr Kjærum and the investigator had, in the past, had a professional relationship in the IMR and that they were co-authors of an academic work does not mean that the investigator's independence in the conduct of the inquiry was compromised or that it may have appeared to have been compromised in the eyes of third parties (see, to that effect, the judgment of 11 September 2002 in Case T-89/01 *Willeme v Commission*, paragraph 58).
- 61 However, it is not disputed that the IMR, of which the investigator was Chairman on the date he was appointed to conduct the inquiry, had concluded with the FRA a contract worth nearly EUR 500 000 for the submission of information to it concerning discrimination based on sexual orientation, between 2007 and 2008, in Denmark. Furthermore, when the investigator conducted the inquiry, that contract was capable of being renewed repeatedly in the future, as confirmed by the FRA during the hearing.
- 62 Thus, in the light of those factors, the existence and the importance of the business relationship between the FRA and the IMR were such as to give rise to justified concern on the part of the applicant as to the objective impartiality of the investigator, as it was understandable that Mr Allgeier might fear that the investigator, because he wanted to maintain that business relationship, would be guided by the aim of protecting the reputation of the Agency.
- 63 It is true that the investigator did not perform directly executive functions within the IMR, as those duties fell to the Director and the senior officials of different departments of the IMR. However, the documents in the case-file demonstrate the central role of the Board – and therefore, that of its chairman – in the functioning of the IMR. This is illustrated by the fact that, in an editorial published on its internet site in 2008, the IMR stated that the Board, under the direction of Mr Jensen, would continue to guide the 'management of the [IMR]'. Furthermore, again on the website, it was pointed out at the time that the Board would be 'responsible for all matters relating to substance and professional issues, including research and strategy'.
- 64 Accordingly, the investigator, to whom secretarial assistance was, in addition, provided by one of the assistants to the Director of the FRA, did not fulfil the necessary conditions for his impartiality to be beyond reproach.
- 65 The applicant is therefore justified in claiming that, for this reason, and in the particular circumstances of the case, the inquiry was vitiated by irregularities.

66 As regards the subjective impartiality of the investigator, while the documents in the file do not support the conclusion that the investigator conducted the inquiry in a manner which favoured the members of staff accused by the applicant, the Tribunal considers it regrettable that, during that inquiry, the investigator communicated to Mr M. and Mr A. all of the correspondence exchanged between the FRA, on the one hand, and the applicant and his counsel, on the other, although a part of that correspondence, concerning a request for the FRA to bear the legal costs incurred by the applicant, concerned neither Mr M. nor Mr A.

67 Similarly, while the applicant had attached a very large number of documents to his request for assistance, the investigator dedicated fewer than three pages, moreover devoid of detail, out of the twelve pages contained in the final report to the discussion of the merits of the complaints raised, the remainder of the report being limited to the presentation of the facts which were not disputed by the parties, to the summary of the law and to the description of the procedure.

– The refusal to guarantee the anonymity of the witnesses

68 It should be noted at the outset that, before commencing the inquiry, the Director established, in cooperation with the investigator, the ‘Legal Framework of the Administrative Inquiry’. That framework, whose applicability to the parties is not contested, includes a heading entitled ‘Modalities related to the audition of witnesses’ which provided inter alia that ‘[w]itnesses [would] not be anonymous to any party of the case, unless special circumstances clearly indicate a need for anonymity’.

69 It is therefore necessary to examine whether, in the present case, special circumstances required the investigator to grant anonymity to the witnesses whom he interviewed and those whom he would have been likely to interview.

70 In the light of the special circumstances of the present case, the Tribunal must answer this question in the affirmative.

71 The investigator was himself fully conscious of the difficulty for members of staff of giving evidence if they did not receive a guarantee that their identities would not be communicated to the two persons accused of psychological harassment. Thus, in the final report, the investigator stated that ‘in a number of cases [he] observed that employees at the FRA – and in particular Staff from the Administration Department – have been reluctant or even unwilling to give testimony, because they feared retaliation afterwards’ and that, in particular, one of them, to whom anonymity had been refused, ‘had decided not to give testimony’. The investigator also pointed out that, while ‘other reluctant witnesses actually gave testimonies, [he had] the clear impression that they told considerably less than they could have told’ and that, consequently, ‘[he could not] disregard the possibility that the present investigation has not disclosed the full truth and that eventual later procedures would not be able to do it either’. Finally, in the conclusion of the final report, the investigator pointed out that, in view of the difficulties encountered in persuading staff to give evidence ‘the testimonies given have been limited’.

72 It should also be pointed out that the investigator, while highlighting those difficulties, stated that the inquiry had identified an ‘intense atmosphere of fear in the Administration Department, an atmosphere which has as consequence that the employees [did] not dare to express their views or [were] at any rate very reluctant to do [so]’.

73 While all the factors referred to by the investigator himself should have led him to guarantee the anonymity of the witnesses, illogically, he did not do so, despite a request to that effect by the applicant.

74 It is true that, in the final report, the investigator based his refusal to guarantee the anonymity of the witnesses suggested by the applicant on the fact that such protection would be illusory, since, from his point of view, the people implicated in the request for assistance were in a position to determine, with a high degree of probability, the origin of certain information. However, it has in no way been established that, if anonymity had been granted, the investigator would have been unable to provide the witnesses with

adequate protection and, in particular, would have been unable to draw up the minutes of hearings in conditions that would prevent the identification of the persons concerned.

75 Moreover, it should be noted that, on 6 February 2009, the main member of staff implicated by the applicant, namely Mr M., sent to the Director, to whom he was, after all, subordinate, a note in which he stated to him that the ‘anonymity [of witnesses could] not be accepted under any circumstances’. Given the background described by the investigator himself, in particular the ‘intense atmosphere of fear in the Administration Department’, the existence of such a note and the terms of that note confirm that the anonymity of the witnesses was essential to enable the inquiry to be carried out under appropriate conditions.

76 In those circumstances, the Tribunal considers that the investigator’s refusal to guarantee the anonymity of the witnesses prevented him from carrying out a comprehensive examination of the facts of the present case and therefore that the inquiry was marred by irregularities.

77 Accordingly, and in so far as the Director relied on the final report in adopting the contested decision, as has been affirmed, that decision should be deemed to be vitiated by illegality.

78 As the first two pleas raised against the contested decision have been upheld, that decision must be annulled, without it being necessary to examine the other pleas in the application and, in particular, those alleging an error of law concerning the interpretation of the legal definition of psychological harassment and the existence of psychological harassment.

Claim for compensation

Arguments of the parties

79 The applicant claims that the FRA should be ordered to pay compensation in the sum of EUR 71 823.23 to make good the material damage he suffered as a result of the psychological harassment.

80 Furthermore, the applicant asks the Tribunal to order the FRA to pay him the sum of EUR 85 000, as compensation for non-material damage caused, firstly, by the psychological harassment suffered and, secondly, by the illegality of the contested decision, which refused to declare that there was harassment.

81 The FRA contends that the claim for damages should be rejected.

Findings of the Tribunal

82 Firstly, concerning the claim that the FRA be ordered to pay compensation in respect of the material and non-material damage the applicant suffered as a result of the psychological harassment, it should be noted that the purpose of the second paragraph of Article 24 of the Staff Regulations is to provide compensation for damage caused to an official or member of staff by the actions of a third party or another official referred to in the first paragraph of the same article, provided that he has been unable to obtain compensation from the person who caused that damage (see order of 5 October 2006 in Case C-365/05 P *Schmidt-Brown v Commission*, paragraph 78). The admissibility of an action for compensation brought by an official or member of staff under the second paragraph of Article 24 of the Staff Regulations is thus subject to the exhaustion of domestic legal remedies in so far as these provide effective protection for the individuals concerned and can result in reparation of the damage alleged (see judgment of 9 March 2005 in Case T-254/02 L v *Commission* [2005] ECR II-277, ECR-SC I-A-63, paragraph 148; judgment of 12 July 2011 in Case T-80/09 P *Commission v Q* [2011] ECR I-0000, paragraph 67).

83 In the present case, it is not established or even alleged that in order to make good the damage resulting from the alleged psychological harassment suffered, the applicant had exhausted the domestic legal remedies or that those remedies would not have provided effective protection. It follows that the claim for compensation for that damage must be dismissed as inadmissible.

84 Secondly, concerning the claim that the FRA should be ordered to pay compensation for the non-material damage resulting from the illegality of the contested decision, it should be recalled that, according to settled case-law, the annulment of an unlawful measure may constitute, in itself, adequate and, in principle, sufficient compensation for all non-material damage which that measure may have caused (judgment of 9 July 1987 in Joined Cases 44/85, 77/85, 294/85 and 295/85 *Hochbaum and Rawes v Commission*, paragraph 22; judgment of 9 November 2004 in Case T-116/03 *Montalto v Council*, paragraph 127; judgment of 8 May 2008 in Case F-6/07 *Suvikas v Council*, paragraph 151), unless the applicant demonstrates that he suffered non-material damage separable from the unlawfulness justifying the annulment and incapable of being entirely remedied by that annulment (see, to that effect, judgment of 7 February 1990 in Case C-343/87 *Culin v Commission*, paragraphs 27 and 28; judgment of 6 June 2006 in Case T-10/02 *Girardot v Commission*, paragraph 131).

85 In the present case, it is true that the contested decision contains no assessment of the applicant's abilities or conduct likely to cause him harm. However, in the light of the questionable way in which the applicant's request for assistance was treated and the inquiry conducted, the annulment of that decision would not be capable of constituting in itself adequate and sufficient compensation for all the non-material damage caused by that decision, resulting from the uncertainty and anxiety caused by the illegality of the contested decision. Accordingly, the FRA must be ordered to pay the applicant the sum of EUR 5 000.

Costs

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

87 It follows from the grounds of this judgment that the FRA is the unsuccessful party in all essential respects. Furthermore, in his pleadings, the applicant has expressly applied for the FRA to pay the costs. Since the circumstances of this case do not warrant application of the provisions of Article 87(2) of the Rules of Procedure, the FRA must bear its own costs and be ordered to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

- 1. Annuls the decision of 16 October 2009 of the European Union Agency for Fundamental Rights;**
- 2. Orders the European Union Agency for Fundamental Rights to pay Mr Allgeier the sum of EUR 5 000;**
- 3. Dismisses the remainder of the application;**
- 4. Orders the European Union Agency for Fundamental Rights to bear its own costs and to pay the costs incurred by Mr Allgeier.**

Kreppel

Perillo

Barents

Delivered in open court in Luxembourg on 18 September 2012.

W. Hakenberg

H. Kreppel

Registrar

President

* Language of the case: English.