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

9 December 2008 (*)

(Civil service – Officials – Psychological harassment – Administration's duty to provide assistance – Rejection of request for assistance – Administration's duty to have regard for the welfare of officials – Appraisal – Appraisal exercise for 2003 – Career development review)

In Case F-52/05,

ACTION under Articles 236 EC and 152 EA,

Q, a former official of the Commission of the European Communities, residing in Brussels (Belgium), represented by S. Rodrigues and Y. Minatchy, lawyers,

applicant,

v

Commission of the European Communities, represented by V. Joris, acting as Agent, and initially by J.-A. Delcorde, lawyer, and subsequently by D. Waelbroeck, lawyer,

defendant,

THE TRIBUNAL (First Chamber),

composed of H. Kreppel (Rapporteur), President, H. Tagaras and S. Gervasoni, Judges,

Registrar: S. Boni, Administrator,

having regard to the written procedure and further to the hearing on 19 June 2007,

gives the following

Judgment

1 By application lodged at the Registry of the Court of First Instance of the European Communities on 4 July 2005, the applicant seeks in essence, firstly, annulment of the decision by which the Commission of the European Communities implicitly rejected her request for assistance, secondly, annulment of her career development reviews drawn up for the periods from 1 January to 31 October 2003 and from 1 November to 31 December 2003 respectively ('the 2003 CDRs') and, thirdly, an order against the Commission to pay her damages.

Legal context

2 Article 12a of the Staff Regulations of Officials of the European Communities, in the version resulting from Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (OJ 2004 L 124, p. 1), which entered into force on 1 May 2004 ('the Staff Regulations'), provides:

‘1. Officials shall refrain from any form of psychological or sexual harassment.

2. An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.

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

4. “Sexual harassment” means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender.’

3 Under Article 24 of the Staff Regulations:

‘The Communities 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.

They 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.’

4 On 22 October 2003, the Commission took formal note of the memorandum from Mr Kinnock, Vice-President of the Commission, concerning ‘Policy on the prevention of psychological harassment’ (‘the Memorandum of 2003 on psychological harassment’).

5 Point 4.1.1(i), of the Memorandum of 2003 on psychological harassment, headed ‘Emergency measures’, provides:

‘At the least suspicion of psychological harassment, it may be possible to move staff from their post. This would be purely to separate the parties involved and have nothing to do with the staff mobility policy. … Since such removals would be temporary, they would not depend on the availability of free posts.

Recourse to such measures, which will depend on the needs of each particular situation, can be immediate and, if necessary, for a predefined period. The idea is to give the alleged victim a breathing space in which to re-establish themselves.’

6 On 26 April 2006, the Commission adopted a decision on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment (‘the Decision of 2006 on psychological harassment and sexual harassment’). That decision, which repealed and replaced the Memorandum of 2003 on psychological harassment, provides inter alia in point 2.5:

‘[I]n line with the Staff Regulations, psychological harassment will only be considered to exist if the conduct of the alleged harasser is regarded as abusive, intentional, repetitive, sustained or systematic and intended, for instance, to discredit or undermine the person concerned. These criteria are cumulative. …’

7 Under Article 43 of the Staff Regulations of Officials of the European Communities, in the version in force until 30 April 2004 (‘the former Staff Regulations’):

‘The ability, efficiency and conduct in the service of each official … shall be the subject of a periodical report made at least once every two years as provided for by each institution …’

8 On 3 March 2004, the Commission adopted a decision on the general provisions for implementing Article 43 of the former Staff Regulations ('the GIP').

9 Article 1(1) and (2) of the GIP provide:

'1. In accordance with Article 43 of the [former] Staff Regulations …, an appraisal exercise shall be conducted at the beginning of each year. The reporting period shall extend from 1 January to 31 December of the preceding year.

Accordingly an annual report, known as the career development review, shall be drawn up for every official within the meaning of Article 1 of the Staff Regulations …, who has been on active service or on secondment in the interests of the service for a continuous period of at least one month during the reporting period. …

2. The appraisal exercise shall be aimed in particular at evaluating the jobholder's efficiency, abilities and conduct in the service. Merit points shall be awarded on the basis of the appraisal for each of these three headings, as shown in the model review set out in Annex II to this Decision.'

10 The parties involved in the appraisal procedure are, firstly, the reporting officer, who must, as a general rule, be the head of unit, as the direct hierarchical superior of the official appraised (Article 2(2) and Article 3(1) and (3) of the GIP), secondly, the countersigning officer, who must, as a general rule, be the director, as the direct hierarchical superior of the reporting officer (Article 2(3) and Article 3(1) of the GIP) and, thirdly, the appeal assessor, who must, as a general rule, be the director-general, as the direct hierarchical superior of the countersigning officer (Article 2(4) and Article 3(1) of the GIP).

11 Article 4(1) of the GIP provides that, in addition to the annual review, an interim review must, in particular, be drawn up where there is a significant change in the nature of the tasks carried out by the jobholder during the reporting period.

12 As regards the actual conduct of the appraisal procedure, which applies to both the annual review and the interim review, Article 8(4) of the GIP provides that, within eight working days of receiving a request to that effect from the reporting officer, the jobholder must produce a self-assessment, which must be included in the career development review ('the CDR'). Within 10 working days of the jobholder submitting a self-assessment, the reporting officer and the jobholder must engage in a formal dialogue which, pursuant to the fourth subparagraph of Article 8(5) of the GIP, must cover three aspects: appraising the jobholder's performance during the reporting period, setting objectives for the next reporting period and drawing up a training map. After the interview between the official and the reporting officer, the CDR must be drawn up by the reporting officer and the countersigning officer. If the jobholder refuses to accept the CDR, a dialogue must be engaged in between the jobholder and the countersigning officer, who may then either alter or confirm the CDR. The official appraised may again refuse to accept the CDR thus altered or confirmed, which has the effect of referring the matter to the Joint Evaluation Committee provided for in Article 9 of the GIP ('the JEC'), whose role is to verify that the CDR has been drawn up fairly and objectively, that is, in so far as possible on a factual basis and in accordance with the GIP and the review guide. The JEC must deliver a reasoned opinion on the basis of which the appeal assessor must either amend or confirm the CDR. Where the appeal assessor departs from the recommendations set out in that opinion, he must justify his decision.

13 According to the model review attached as Annex II to the GIP, a mark and a corresponding assessment are to be awarded in respect of each of the appraisal headings. As regards the mark, the maximum number of points is 10 for heading 6.1 'Efficiency', 6 for heading 6.2 'Abilities (competencies)' and 4 for heading 6.3 'Conduct in the service'. As for the assessment, it ranges from 'insufficient' to 'very good' or even 'outstanding' in the case of headings 6.1 'Efficiency' and 6.2 'Abilities (competencies)', the intermediate assessments being, in ascending order, 'poor', 'sufficient' and 'good'.

14 In July 2002, the Commission informed its staff, through the intranet, of a document entitled ‘Career Development Review System – Guide’ (‘the review guide’). This sets out in detail the rules and procedures for drawing up CDRs.

15 Point 6.2, ‘Performance review’, of the review guide provides, inter alia, as regards the appraisal of efficiency/performance:

‘While objectives should normally be amended in the course of the year to reflect changing circumstances, note that a jobholder should not be penalised if it was not possible to achieve an objective because of external factors. In such instances, the focus should be on what the jobholder was actually able to get done and on the way in which the jobholder managed the situation. The same principles apply if the jobholder is absent during the year, for example, if the jobholder is ill, goes on maternity leave or has outside obligations such as jury service …’

16 The first paragraph of Article 57 of the Staff Regulations provides that officials are to be entitled to annual leave of not less than 24 working days nor more than 30 working days per calendar year.

17 Under the first subparagraph of Article 59(1) of the Staff Regulations, an official who provides evidence of incapacity to perform his duties because of sickness or accident is to be automatically entitled to sick leave.

Facts

A – 2000, 2001 and 2002

18 The applicant, who was previously an administrative judge in Sweden, was appointed, at the age of 47, with effect from 16 July 2000, as a probationary official in grade A 5 and assigned to Unit B 2, ‘European Civil Service; Staff Regulations and Discipline’ (‘Unit B 2’), of Directorate B, ’Rights and Obligations; Social Welfare Policy and Measures’ (‘Directorate B’) of the Commission’s Directorate-General (DG) for Personnel and Administration.

19 On 16 March 2001, a report at the expiry of the probationary period relating to the period from 16 July 2000 to 15 April 2001 (‘the first report at the expiry of the probationary period’) was drawn up by the director of Directorate B after consulting the head of Unit B 2. The director of Directorate B noted in that report that the applicant ‘[had] been unable to carry out, within reasonable times and, in one case, [not] at all, certain important tasks which [had] been entrusted to her’ and that there had been ‘some difficulties with relationships in the department’. He also found a ‘lack of familiarity with the administrative and hierarchical system in force at the Commission’. Finally, he proposed, in the conclusion of the report, that the applicant’s probationary period be extended and that she be ‘assigned to another department’.

20 On 22 March 2001, the applicant submitted comments contesting the first report at the expiry of the probationary period. In those comments, she drew attention in particular to the importance and quality of the work which she had carried out during her probationary period and pointed out that she had not, at any time, been the subject of the slightest criticism concerning her performance. She then requested that her first report at the expiry of the probationary period ‘be reviewed in respect of the unfavourable points’, stating, moreover, that she was prepared to ‘testify [herself] before the Joint Reports Committee and/or call for other witnesses [if that should] prove necessary’.

21 The first report at the expiry of the probationary period and the applicant’s comments were transmitted to the appointing authority which submitted them to the chairman of the Joint Reports Committee on 27 March 2001.

22 The chairman of the Joint Reports Committee, by a memorandum of 27 March 2001, transmitted the first report at the expiry of the probationary period and the applicant’s comments to the other members of the

Joint Reports Committee and proposed that they adopt, by written procedure, the draft opinion attached to his memorandum by the deadline of 6 April 2001.

23 Since the members of the Joint Reports Committee did not send any comments on the draft opinion of the chairman of the committee to the secretariat of the Joint Reports Committee by the deadline of 6 April 2001, the appointing authority, by decision of 9 April 2001, extended the applicant's probation for the period from 16 April to 15 October 2001 ('the decision extending the probationary period').

24 The applicant was assigned, as from 16 April 2001, to Unit B 4, 'Salaries and Payment of Entitlements' of the DG for Personnel and Administration, then, as from 21 May 2001, to Unit 001, which subsequently became Unit 03, 'Social Dialogue' ('the Social Dialogue Unit'), which was also in Directorate B of the DG for Personnel and Administration.

25 On 21 May 2001, the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the first report at the expiry of the probationary period and the decision extending the probationary period.

26 By a decision dated 20 September 2001, the appointing authority rejected the complaint made on 21 May 2001 by the applicant. However, in that decision, the appointing authority admitted that the Joint Reports Committee '[had] been informed by mistake that the [applicant] had agreed to the extension of the probationary period in another unit' and pointed out that this mistake 'stem[med] from the fact that the [applicant] had proposed her reassignment to [Unit B 4] in the context of [the] notified extension of her probationary period, while at the same time being unable to give her agreement to the extension of the probationary period itself'. No action was subsequently brought by the applicant before the Community Courts against the first report at the expiry of the probationary period and the decision extending the probationary period.

27 On 25 September 2001, a report at the expiry of the probationary period relating to the period from 16 April to 15 October 2001 ('the second report at the expiry of the probationary period') was drawn up by the director of Directorate B after consulting the head of the Social Dialogue Unit. In that report, he proposed that the applicant be appointed as an established official.

28 By decision of 24 October 2001, the appointing authority appointed the applicant as an established official with effect from 16 October 2001.

29 Despite the fact that, from the end of 2001, the applicant had expressed a wish to leave the DG for Personnel and Administration to work in another directorate-general, she was assigned, as from 1 February 2002, to Unit A 2, 'Recruitment Policy', which subsequently became Unit A 4, 'Recruitment Policy (pre-EPSO)', of the DG for Personnel and Administration.

B – 2003

30 As from 1 January 2003, the applicant was assigned to Unit 01, 'Relations with the Institutions, ABM and Document Management' ('Unit 01'), which subsequently became Unit D 2 ('Unit D 2'), in Directorate D, 'Resources', of the DG for Personnel and Administration.

31 During 2003, the applicant was on sick leave from 5 to 28 February and from 10 to 14 March, working half-time for medical reasons from 17 March to 28 April, on sick leave from 30 June to 4 July and from 1 September to 14 November, and again working half-time for medical reasons from 17 November to 19 December.

32 Notwithstanding her assignment, from 1 January 2003 onwards, to Unit 01, the applicant retained until June 2003 the office which she had occupied when she was assigned to Unit A 4, that is, an office on floor 2 of the Commission building at 34 rue Montoyer in Brussels ('the Montoyer 34 building'), whereas the offices of the rest of Unit 01 were on floors 7 to 10 of the Commission building at 11 rue de la Science in Brussels ('the Science 11 building').

33 From June 2003 until the summer of 2004, the applicant was allocated an office on a mezzanine between the ground floor and the first floor of the Science 11 building.

34 On 10 June 2003, the applicant's job description was drawn up and sent to her.

35 On 3 July 2003, the deputy head of Unit D 2 sent an e-mail to the applicant, worded as follows:

'I have discussed the problem of offices with the unit [D 3, 'Human and Financial Resources ADMIN; IAS; Cabinets Cell', of the DG for Personnel and Administration']. They have started discussing a solution which would match our request, namely the regrouping of Unit D 2 over two floors. As that discussion is taking place against the background of many other changes, there is no immediate solution yet, but we stand a good chance. I think we shall get our wish.

In order to resolve the question of your office immediately, [Unit] D 3 has proposed that you go temporarily to the floor 7 of [the Science 11 building], next to … and together with … in a large office (currently the archives office).

Could you let me know if you accept this offer?'

36 On 7 July 2003, the applicant replied to the deputy head of Unit D 2 by sending him an e-mail containing the following passage:

'With regard to the question of the office, I honestly do not know. I am going on holiday on 18 July and will be back on 18 August. Perhaps we should wait and see whether a permanent solution may have been found towards August?'

37 On 11 September 2003, the deputy head of Unit D 2 wrote to the official responsible, in Unit D 3, 'Human and Financial Resources ADMIN; IAS; Cabinets Cell', of the DG for Personnel and Administration, for managing property in the inventory ('the inventory property manager'), the following e-mail:

'You recall the discussions we had together with regard to [the need to find] a suitable office for [the applicant], discussions which were due, according to our agreement, to continue after the summer holidays. A long-term solution [consisting in regrouping] the whole of Unit D 2 on floors 9 and 10 of the [Science 11 building] does not appear to be feasible for the moment. Please would you therefore make available to our unit an office suitable for [the applicant] and as close as possible to floors 9 and 10 of the [Science 11 building].

This matter is assuming a degree of urgency, in so far as the unsuitability of [the applicant's] present office on the ground floor [of the Science 11 building] appears to be seriously affecting [her] efficiency and calls for an immediate solution.

I look forward to your reply.'

38 Since the inventory property manager was on leave at the time when the e-mail quoted in the preceding paragraph was sent, the deputy head of Unit D 2, on 30 September 2003, again drew his attention to the problem of the applicant's office.

C – 2004

39 On 2 February 2004, the applicant submitted a request for annual leave for the period from 1 to 5 March 2004. That request was approved on 3 February 2004.

40 By letter of 29 April 2004, received at the Appeals Unit of the DG for Personnel and Administration on 3 May 2004, the applicant addressed to the Commission a '[r]equest for assistance under Article 24 of the Staff Regulations …, also to be taken as a request within the meaning of Article 90(1) of the Staff Regulations – psychological harassment' ('the request for assistance'). In it, she complained of several

matters which she characterised as psychological harassment and sought the opening of an administrative inquiry by a ‘neutral body’ outside the DG for Personnel and Administration. Finally, the applicant claimed compensation, in the amount of EUR 100 000, for the damage which she claimed to have suffered as a result of the alleged psychological harassment (‘the compensation claim’).

41 In consequence of the submission by the applicant of a medical certificate relating to the period from 16 April to 11 June 2004, the administration required her to undergo a medical examination carried out by the institution’s medical officer who, in an opinion of 7 May 2004, considered that she was ‘100% fit to work as from 10 [May] 2004’ but that ‘a change of post was desirable for the sake of [the applicant]’s health’.

42 In a letter dated Friday 7 May 2004, the applicant reiterated her request for assistance as previously formulated in her letter of 29 April 2004. In addition, relying on the opinion following the medical examination mentioned in the preceding paragraph, she requested the adoption of ‘preventive and immediate measures, such as [her] reassignment or temporary transfer’ to a directorate-general other than the DG for Personnel and Administration, in order that she could be protected from the ‘improper conduct’ of her immediate superiors. Finally, the applicant also requested compensation for the material consequences of the conduct alleged against her superiors.

43 On that same 7 May 2004, at 14.53 hrs, the applicant sent to the new head of Unit D 2, who had taken up his post on 16 February 2004, an e-mail containing the following passages:

‘I have tried to submit to … “SIC Congé” [computerised system designed to facilitate the administrative management of leave] a request for annual leave from 10 May to 30 June 2004 without success (according to … “SIC Congé”, I am already on sick leave).

…

Pending temporary measures, I feel obliged (for the sake of my health as well as my safety) to move away from my working environment. It is therefore for that reason that I am requesting annual leave.

Since I am unable to submit the request for annual leave [to “SIC Congé”], please would you be so kind as to confirm by [e-mail] as soon as possible and by 16.00 hrs this afternoon at the latest [whether] you approve my request for annual leave from 10 May to 30 June 2004.’

44 On that same 7 May 2004, at around 16.00 hrs, the applicant had an interview with the head of Unit D 2 regarding her request for annual leave. According to the applicant, he expressed his agreement to her taking her annual leave as from 10 May.

45 On that same 7 May 2004, at 18.01 hrs, the head of Unit D 2 sent to the applicant an e-mail, part of which was worded as follows:

‘Since a number of questions concerning you need to be resolved quickly, I would ask you – in the interests of the service and in so far as your annual leave has not yet started – kindly to come to the office on Monday morning.

The question of your leave will also be addressed on that occasion.’

46 Also on 7 May 2004, at 18.24 hrs, the applicant replied to the head of Unit D 2 by the following e-mail:

‘I refer to our interview in your office today at 16.00 [hrs] at which you assured me that there was no problem regarding my request for annual leave as from Monday … 10 May and that I could spend the weekend taking it easy and not return on Monday. There was only the problem [of the “SIC Congé”] and the signatures … . Now I have already booked a plane ticket to return to Sweden a bit later.

Dr … promised me that he would try to find another solution if my request for annual leave was not approved this afternoon. As you told me of your change of decision this evening, Dr … can no longer be

reached. I shall therefore go to the Medical Service directly on Monday morning to try to see Dr … or another doctor.'

47 On 10 May 2004, in reply to the e-mail mentioned in the preceding paragraph, the head of Unit D 2 sent to the applicant an e-mail worded in part as follows:

'I simply wish to confirm to you that [the director of Directorate D] wishes to meet you in the course of the day to discuss with you in particular your potential transfer, as recommended by the Medical Service [on Friday 7 May 2004] in its opinion, and to follow up the other approaches made previously, in your interest.'

48 Also on 10 May 2004, the applicant met with the director of Directorate D. According to the applicant, it was agreed at that meeting that she could take annual leave from 19 May 2004 for three weeks.

49 On 11 May 2004, the applicant sent an e-mail to the assistant to the director of Directorate D, in which she requested the earliest possible confirmation of her directorate's approval concerning the annual leave which she wished to take from 19 May to 8 June 2004, pointing out in that regard that the travel ticket which she had reserved for the period in question had to be paid for by the next day, that is, by 12 May 2004, at the latest.

50 In reply to the applicant's e-mail of 11 May 2004, the assistant to the director of Directorate D sent, on the same day, several e-mails to the applicant, in which she informed her that it was necessary, before she could be authorised to go on leave, for her to meet with the head of Unit D 2 so that the formal dialogue provided for in Article 8(5) of the GIP could take place and so that the director of Directorate D and the head of Unit D 2 could draw up her CDR for the period from 1 January to 31 October 2003 ('the January-October 2003 CDR'). Moreover, in an e-mail sent on 12 May 2004 to the applicant, the assistant to the director of Directorate D added that the latter could not give the applicant any guarantee regarding approval of her request for annual leave, since such approval was subject to the completion of steps which depended on several persons, including the applicant herself.

51 In consequence of that reply, the applicant, by e-mail of 12 May 2004, informed the assistant to the director of Directorate D that she was forgoing the annual leave which she had requested for the period from 19 May to 8 June 2004 and that she was now asking to take annual leave from 7 June to 23 July 2004.

52 On 13 May 2004, the request for annual leave for the period from 7 June to 23 July 2004 was formally submitted to 'SIC Congé' and approved on 19 May 2004. However, taking the view that she had not been informed of that approval until 24 May 2004, that is, belatedly, the applicant withdrew her request for annual leave.

53 Also on 13 May 2004, the director of Directorate D sent the applicant's curriculum vitae to five directorates-general (DG for Energy and Transport, European Anti-Fraud Office (OLAF), DG for Justice and Home Affairs, DG for Health and Consumer Protection and DG for Competition). In the letter accompanying the curriculum vitae and addressed to each of the abovementioned directorates-general, the director of Directorate D stated that the applicant had expressed an interest in the subjects falling within the field of competence of the directorate-general concerned and that the DG for Personnel and Administration had expressed its agreement that she could be reassigned together with her post.

54 On 18 May 2004, the psychiatrist to whom the Medical Service had entrusted the task of drawing up a psychiatric report on the applicant pointed out, in his report, that '[s]ince the problem is of a social nature (a dispute within her [i]nstitution), the solution … must therefore be adopted at the social level (reintegration in another [d]irectorate-[g]eneral)'.

55 On 24 May 2004, the applicant reiterated her request for an 'immediate transfer, either permanent or temporary, to a [directorate-general] which has nothing to do with the DG [for Personnel and

Administration] or with [the director-general of that directorate-general]', explaining that 'the psychological harassment [to which she was being subjected] [had] manifestly not stopped'.

56 On 7 June 2004, the applicant had a medical certificate issued to her in respect of the period from 8 June to 2 July 2004.

57 On 8 June 2004, the applicant sent to the head of Unit D 2 an e-mail informing him that she was 'unfit to work in [her] present post' between 8 June and 2 July 2004. She stated that she had just submitted to 'SIC Congé' a request for annual leave relating to the period from 5 July to 13 August 2004.

58 On 9 June 2004, the director of Directorate D sent the following e-mail to the applicant:

'I am sorry about your illness. [I] tried to contact you at your home address, since 8 June was the date scheduled for our meeting and I wanted to discuss with you what should be done from now on.

You have made a request for review of your [January-October 2003 CDR] and that task should be completed as soon as possible and, in any event, before you go on annual leave. The finalisation of the appraisal procedure affects the whole DG [for Personnel and Administration] since, if it is not seen through to completion, we shall not receive any priority points and, consequently, the promotion prospects of all staff will be jeopardised. …

Perhaps you could make another appointment with my secretary …'

59 By a letter of 11 June 2004, the director of the Investigation and Disciplinary Office ('the IDOC') informed the Secretary-General of the Commission that the facts alleged by the applicant in her request for assistance seemed to him to be sufficiently serious to justify the opening of an administrative inquiry, 'either to demonstrate the existence of individual blame, or to clear the names of officials unjustly implicated'. The director of the IDOC added that, in view of the applicant's implication of the entire hierarchy of the DG for Personnel and Administration, including its director-general, it seemed appropriate to him that the Secretary-General of the Commission should act as the appointing authority in the administrative inquiry and that someone from outside the DG for Personnel and Administration should be appointed as the 'hearing officer' to conduct that inquiry.

60 On 14 June 2004, the request for leave relating to the period from 5 July to 13 August 2004 was formally rejected by the head of Unit D 2.

61 On 18 June 2004, the Medical Service expressed the opinion that the applicant '[should be] considered to be on justified absence until 16 July inclusive'.

62 On 21 June 2004, the applicant submitted to 'SIC Congé' a request for annual leave relating to the period from 19 July to 27 August 2004.

63 As from the summer of 2004, the applicant was allocated an office on the eighth floor of the Science 11 building.

64 On 1 July 2004, the Secretary-General of the Commission informed the director of the IDOC that he agreed to act as the appointing authority in the proposed administrative inquiry and gave the name of the hearing officer he had chosen to conduct that inquiry.

65 Also on 1 July 2004, the applicant, on the ground that she had been informed that her request for annual leave for the period from 19 July to 27 August 2004 was not going to be approved, sent an e-mail to a member of staff in Unit B 2 to complain that '[her] requests for annual leave [were] always refused or at least not signed within a reasonable time' and to ask that member of staff 'to help [her] so that [she] could go on holiday [in the summer of 2004]'.

66 On 5 July 2004, the applicant submitted a medical certificate relating to the period from 17 July to 27 August 2004. That certificate was not challenged by the administration.

67 On 2 August 2004, the Commission approved the request for annual leave relating to the period from 19 July to 27 August 2004. That request was ‘cancelled’ on 3 September 2004, the applicant having been on sick leave between 17 July and 27 August 2004.

68 On 1 September 2004, the applicant produced a medical certificate relating to the period from 28 August to 25 September 2004.

69 On 6 September 2004, the medical examination which the applicant had been required to undergo following the production of the medical certificate relating to the period from 28 August to 25 September 2004 concluded that she was ‘100% fit to work as of today’ but nevertheless reiterated the observation, made on 18 May 2004 by the psychiatrist who had examined the applicant at that time, that ‘a change of post [was] desirable for the sake of [the applicant]’s health’.

70 On 7 September 2004, the applicant, taking the view that the conclusions of the medical examination of 6 September 2004 were unjustified on medical grounds, submitted to the Commission a request that the matter be referred to an independent doctor for an opinion pursuant to the fifth subparagraph of Article 59(1) of the Staff Regulations.

71 By a note of 8 September 2004, the hearing officer appointed by the Secretary-General of the Commission in connection with the administrative inquiry requested by the applicant received authority from the Secretary-General to ‘establish the truth of the claims made, as regards in particular the conduct of the official(s) whose names are mentioned in the file, and thus make it possible to determine the truth of the situation and any action which may, where appropriate, have to be taken’.

72 On 15 September 2004, the Medical Service informed the head of the Human Resources – ADMIN, Internal Reforms Unit that ‘an expert [had] been appointed by mutual agreement with [the doctor treating the applicant] to give an independent opinion’.

73 In the conclusion of his medico-psychological examination report dated 6 October 2004, the independent doctor chosen following the request for an opinion made by the applicant (‘the independent doctor’) found that ‘she [was] fit to go back to work but in another [directorate-general]’ and explained that ‘putting her back in her previous post [could] only revive the experiences of psychological harassment and destabilise her’.

74 By a note of 14 October 2004, the director of Directorate C, ‘Social Welfare Policy, Luxembourg Staff, Health, Hygiene’ of the DG for Personnel and Administration (‘Directorate C’) notified the director of Directorate D of the independent doctor’s conclusions and recommended that he ‘reassign [the applicant] outside [that directorate-general] as soon as possible so that [she] could resume her duties’.

75 By a note dated 5 November 2004 and making reference to the requests for assistance made by the applicant, the head of the Appeals Unit of the DG for Personnel and Administration informed the applicant that the Secretary-General of the Commission had opened an inquiry entrusted to a ‘hearing officer from outside the DG [for Personnel and Administration]’ and that the appointing authority would rule on her request for assistance on the basis of the inquiry report and in keeping with its tenor.

76 By a note dated 26 November 2004, received at the Appeals Unit on 30 November 2004, the applicant submitted a complaint ‘against the implied decisions rejecting [her] requests for assistance and protection, [her] requests for the adoption of immediate preventive measures and [her] claim for damages’ (‘the complaint of 26 November 2004’).

77 By a decision of 21 December 2004, the applicant was assigned, as from 1 January 2005, to Unit C 5, ‘Health and Safety at Work’ (‘Unit C 5’), of the DG for Personnel and Administration.

D – 2005

78 On 6 January 2005, the applicant had an interview with the head of Unit C 5, following which she stopped going to work altogether.

79 On 21 March 2005, the administrative inquiry report drawn up by the hearing officer was sent to the Secretary-General of the Commission. In the conclusion of his report, the hearing officer made the following observations:

‘1. None of the episodes which I have recorded in this report reveals, on its own, on the part of the persons implicated by [the applicant], any improper conduct undermining, intentionally, [her] personality, dignity or physical or psychological integrity.

I have occasionally had the feeling that certain acts or behaviour directed at [the applicant] were bordering on abuse or, more accurately, to use the terminology of the English version of the Staff Regulations, “improper conduct” towards her. I even think that that boundary may, in some instances, have been crossed. Nevertheless, I have never had the feeling that the behaviour or acts in question were vitiated by intentionality on the part of the person(s) responsible for them in the sense that they were designed to undermine [her] personality, dignity or integrity.

…

3. The questioning which I have carried out in the course of this inquiry leads me to understand that [the applicant] feels herself to be the victim of a situation of psychological harassment, which would explain why she may be attributing to her superiors intentions which the latter, in my view, do not have. I can only regret in that regard the tactlessness to which [she] has been subjected. The circumstances which surrounded the extension of her probation, the circumstances in which she arrived in the unit [D 2] or the isolation of her office thus helped to fuel a confrontational relationship between [the applicant] and her superiors. In view of the fact that that confrontational relationship has now lasted several years, I do not believe that it can be resolved by an effort of mutual understanding. Only a rapid reassignment of [the applicant] outside the DG [for Personnel and Administration] could offer her the opportunity, which it is up to her to seize, of a fresh start.’

80 On 29 March 2005, the appointing authority rejected the complaint of 26 November 2004. It pointed out that it had ‘responded to the [applicant]’s various requests in the light of the nature of the facts, in a manner proportionate to their importance and to the evidence provided, by deciding, in due time, to open an inquiry in order to establish the facts, an inquiry which [was] ongoing’. In conclusion, the appointing authority stated that, ‘[a]t the conclusion of the inquiry now ongoing, its findings w[ould] be communicated to the [applicant]’ and that ‘depending on those findings, it w[ould] take, if necessary, any measures which prove justified in the light of those findings, on the basis of Article 24 of the Staff Regulations’.

81 On 15 April 2005, the applicant submitted a request for retirement on the ground of invalidity. In her request, she stated that she had been ‘a victim of psychological harassment within the DG [for Personnel and Administration] for several years’, and that ‘that situation [had] had serious consequences for [her] health’.

82 On 13 June 2005, the appointing authority referred the applicant’s case to the Invalidity Committee.

83 By a letter of 11 July 2005 addressed to the Commission, the applicant, after referring to her request of 15 April 2005 for retirement on the ground of invalidity, stated that she ‘confirm[ed] [her] request for recognition as an occupational disease of the pathologies contracted by reason of the acts of harassment perpetrated in regard to [her]’.

84 At its meeting on 26 July 2005, the Invalidity Committee concluded that the applicant was ‘suffering from … permanent invalidity and that she [was] obliged, on these grounds, to end her service with the Commission’. The Invalidity Committee pointed out that it was not making a determination as to whether or not the invalidity had resulted from an accident in the course of the performance of her duties or from an occupational disease.

85 By decision of the Commission of 23 August 2005, the applicant was retired on grounds of invalidity as from 31 August 2005 and received an invalidity allowance fixed ‘in accordance with the provisions of the [third] paragraph of Article 78 … of the Staff Regulations’.

86 By letter of 16 September 2005 addressed to the applicant, the appointing authority expressly rejected the request for assistance made by her, taking the view, on the basis of the conclusions of the administrative inquiry, that the claims of psychological harassment were not well founded or had not been susceptible of proof.

87 By note received by fax at the Medical Service on 7 October 2005, the Invalidity Committee expressed the view, ‘faced with the permanent nature of the pathology which led to the invalidity, that no additional medical examination [was] necessary’.

88 By a request submitted on 17 October 2005, the applicant applied to the Commission for recognition of the occupational origin of the ‘anxio-depressive syndrome’ from which she was suffering. That procedure was still ongoing on the date of the hearing in this case.

E – Facts relating to the CDRs drawn up for 2003

89 On 12 May 2004, the formal dialogue provided for in Article 8(5) of the GIP, between the applicant and the official who performed the duties of head of Unit D 2 until 31 October 2003, was held, for the purpose of drawing up the January-October 2003 CDR.

90 On 18 May 2004, the head of Unit D 2 until 31 October 2003, in his capacity as the applicant’s reporting officer, drew up the draft January-October 2003 CDR. In that draft, she was awarded an overall mark of 8/20, that is, 4/10 for efficiency, 3/6 for ability and 1/4 for conduct in the service.

91 After noting, under heading 6.2 ‘Abilities’ of the January-October 2003 CDR, the difficulties experienced by the applicant in familiarising herself with her job, which were due, in his view, to a ‘lack of motivation’, the reporting officer stated that he had, by a note of 3 September 2003, informed the applicant that he would be referring to the Human Resources – ADMIN, Internal Reforms Unit and to the Medical Service the question whether ‘her health situation was such as to allow her, in the future, to do her job normally’. The reporting officer also noted that ‘no improvement [in the applicant’s] efficiency between 3 September 2003 and the end of October [2003] [had] been observed’.

92 On 18 May 2004, the director of Directorate D, in his capacity as countersigning officer, countersigned the draft January-October 2003 CDR.

93 On 27 May 2004, the applicant requested a review of her January-October 2003 CDR.

94 The interview between the countersigning officer and the applicant, provided for in Article 8(10) of the GIP, did not take place, on account, according to the countersigning officer, of ‘[the applicant]’s extended absence’.

95 On 14 July 2004, the countersigning officer declared the January-October 2003 CDR ‘administratively closed’. The following day, the head of the Human Resources – ADMIN, Internal Reforms Unit confirmed the administrative closure of the review ‘in reference to the comments of the reporting officer and the countersigning officer, in order to preserve the entirety of the rights of the person concerned’.

96 On 8 July 2004, the draft CDR for the period from 1 November to 31 December 2003 (‘the November-December 2003 CDR) was drawn up by the applicant’s reporting officer, this function no longer being carried out by the head of Unit D 2 but by the director of Directorate D. In that draft, which was prepared without the applicant’s having previously produced her self-assessment, she was again awarded the overall mark of 8/20, that is, 4/10 for efficiency, 3/6 for ability and 1/4 for conduct in the service.

97 Under heading 6.1 ‘Efficiency’ of the November-December 2003 CDR, the reporting officer stated that he had come to the conclusion ‘that there had been no valid results in the course of the reporting period and that no results had been achieved, although those results were within [the applicant]’s control’. The reporting officer added that this was, from his point of view ‘the result of a lack of motivation [on the part of the applicant] and of her conduct’.

98 On 13 July 2004, the draft November-December 2003 CDR was countersigned by the applicant’s countersigning officer, that function being carried out by the Director-General of the DG for Personnel and Administration. The countersigning officer also declared the CDR administratively closed.

99 By a letter dated 21 September 2004, the head of the Human Resources – ADMIN, Internal Reforms Unit informed the applicant that, in the 2004 promotion procedure, the Director-General of the DG for Personnel and Administration had decided not to award her any priority points. That letter pointed out that the overall mark awarded to the applicant in the 2003 appraisal exercise was 8/20.

100 On 20 December 2004, the applicant submitted a complaint under Article 90(2) of the Staff Regulations, by which she sought annulment of her January-October 2003 CDR and of her November-December 2003 CDR.

101 By decision of 4 May 2005, of which the applicant acknowledged receipt on 7 June 2005, the appointing authority rejected that complaint.

Procedure and forms of order sought by the parties

102 The present action was originally lodged on 4 July 2005 at the Registry of the Court of First Instance under the reference T-252/05.

103 By order of 15 December 2005, the Court of First Instance, pursuant to Article 3(3) of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7), referred the present case to the Tribunal. The action was lodged at the Registry of the Tribunal as Case F-52/05.

104 The applicant claims that the Tribunal should:

– declare the present application admissible;

– to the extent necessary, annul the decision of 29 March 2005 by which the Commission rejected the … complaint, brought on 29 November 2004, against the Commission’s implied decisions rejecting the request …, pursuant to Article 24 of the Staff Regulations, for assistance and the award of damages, and the requests for the adoption of immediate preventive measures of 7 May 2004 and 24 May 2004;

– annul the Commission’s decision of 4 May 2005 in reply to the applicant’s complaint of 20 December 2004 and the career development review drawn up in respect of the applicant for the period from 1 January 2003 to 31 December 2003;

– hold the European Community liable on account of the [abovementioned] decisions and the drawing-up of the applicant’s CDR;

– award the applicant compensation in the amount of EUR 250 000 for damage suffered;

– order the [Commission] to pay the costs.

105 The Commission contends that the Tribunal should:

– dismiss the action;

– make an appropriate order as to costs.

106 Following the agreement of the two parties to an attempt to reach an amicable settlement, the Judge-Rapporteur invited them to an informal meeting, which took place at the Tribunal on 9 October 2006. On 17 October 2006, the Judge-Rapporteur informed the parties of an offer in settlement. By letter of 24 October 2006, that offer was refused by the Commission.

107 In accordance with Article 64(3)(a) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the Tribunal pursuant to Article 3(4) of Decision 2004/752, the Tribunal put questions to the parties. They complied with the Tribunal's request.

108 By fax received at the Tribunal Registry on 17 June 2007, the applicant assessed the material damage suffered by her at the total sum of EUR 781 906.43, representing the difference between, on the one hand, the remuneration and pension which she would have received if she had not been retired on the ground of invalidity and, on the other, the invalidity allowance which she receives and the pension which will be paid to her in the future.

109 By order of 26 September 2007, the Tribunal rejected the Commission's request for the deletion of sentences appearing in the annexes to the administrative inquiry file.

Law

A – Preliminary observations on the subject-matter of the dispute

110 The subject-matter of the action, as formally described by the applicant, calls for the following observations.

111 Firstly, the applicant formally seeks, in her second head of claim, annulment 'of the decision of 29 March 2005 by which the Commission rejected the … complaint, brought on 29 November 2004, against the Commission's implied decisions rejecting the request …, pursuant to Article 24 of the Staff Regulations, for assistance and the award of damages, and the requests for the adoption of immediate preventive measures of 7 May 2004 and 24 May 2004'. Thus, according to the applicant, three distinct implied decisions were taken, the first rejecting the request for assistance made in the letter of 29 April 2004, the second rejecting the claim for damages also contained in the same letter, and the third rejecting the request for transfer out of the DG for Personnel and Administration, made in the letters of 7 and 24 May 2004.

112 In that regard, it is common ground that, by letter of 29 April 2004 received at the Appeals Unit of the DG for Personnel and Administration on 3 May 2004, the applicant addressed to the Commission a '[r]equest for assistance under Article 24 of the Staff Regulations …, also to be taken as a request within the meaning of Article 90(1) of the Staff Regulations – psychological harassment'. In that letter, she complained of several facts which she characterised as psychological harassment and sought the opening of an administrative inquiry by a 'neutral body' outside the DG for Personnel and Administration. The applicant also requested, in that letter, compensation for the damage resulting from that alleged psychological harassment.

113 In addition, following the letter of 29 April 2004, the applicant, on 7 and 24 May 2004, sent to the Commission two further letters in which she requested the adoption of 'immediate preventive measures'

such as her ‘reassignment or transfer’ out of the DG for Personnel and Administration. However, in those letters, the applicant expressly made reference to the letter of 29 April 2004 and justified her request to be moved on the ground of the psychological harassment of which she considered herself to be a victim within the directorate-general to which she was assigned. Consequently, it must be held that those letters contained, not new requests, independent of the request for assistance, but points of clarification of the latter as regards the measures to be taken preventively and immediately, in this instance removal from her post.

114 In those circumstances, the applicant must be regarded as having in essence sought, in her request for assistance, three types of measures: firstly, the opening and conduct of an administrative inquiry; secondly, an immediate removal from her post even before the findings of the administrative inquiry were known; thirdly, any measure intended, once the truth of the psychological harassment was established, to protect her permanently.

115 Since, at the end of a period of four months following the submission, on 3 May 2004, of the letter of 29 April 2004, the administration had not replied either to the request for assistance or to the compensation claim, that failure to reply gave rise, pursuant to Article 90(1) of the Staff Regulations, to two implied decisions rejecting them, the first refusing to grant the request for assistance, the second rejecting the compensation claim.

116 Secondly, it is apparent from the wording of the third head of claim that, according to the applicant, the Commission drew up, for 2003, only one CDR. However, it is established that, pursuant to Article 4(1) of the GIP, the Commission drew up, for the applicant, two reviews, the first of which related to the period from 1 January to 31 October 2003 (the January-October 2003 CDR) and the second to the period from 1 November to 31 December 2003 (the November-December 2003 CDR).

117 In the light of the points of clarification set out above and having regard to the case-law according to which a claim seeking annulment of a decision rejecting a complaint has the effect of bringing before the Community judicature the act adversely affecting the applicant against which the complaint was submitted (Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8; Case T-310/02 *Theodorakis* v *Council* [2004] ECR-SC I-A-95 and II-427, paragraph 19; and Case T-80/04 *Castets* v *Commission* [2005] ECR-SC I-A-161 and II-729, paragraph 15), the present action must be regarded as seeking, in essence:

– annulment of the implied decision rejecting the request for assistance;

– annulment of the 2003 CDRs;

– an order against the Commission to pay damages to the applicant.

118 However, it is to be noted that the applicant claims, in support of her main submissions and pleas in law, that she was subjected to psychological harassment in the course of her duties.

119 Consequently, the Tribunal considers it necessary, in order to rule on the applicant’s various heads of claim, to examine first her assertions concerning the existence of psychological harassment.

B – The psychological harassment

1. Arguments of the parties

120 According to the applicant, the reality of the psychological harassment by the hierarchy of the DG for Personnel and Administration of which she was a victim is established by a body of facts which can appropriately be grouped together in six categories.

121 In the first place, the head of Unit B 2, the unit to which the applicant had been assigned upon her appointment by the Commission as a probationary official, provided the director of Directorate B, who

was responsible for drawing up the first report at the expiry of the probationary period, with unjustly critical information on the quality of her work, even though, during the first part of the probationary period, he had not directed any criticism at her and had even expressed his satisfaction to her. Moreover, on the erroneous pretext that she had agreed to the extension of her probation, the Joint Reports Committee did not hold hearings at which either she or the persons whom she wished to be heard could state their views. Finally, the applicant points out that one of her former colleagues is prepared to give evidence regarding the working conditions within Unit B 2.

122 In the second place, the applicant was professionally isolated, from the time of her assignment to Unit 01 (which subsequently became Unit D 2), since the head and deputy head of that unit systematically avoided speaking to her and allocated to her, until the summer of 2004, offices which were geographically isolated from the rest of the unit and without any suitable equipment.

123 In the third place, no tasks were assigned to the applicant between January and June 2003.

124 In the fourth place, the applicant's immediate superiors spread defamatory rumours concerning her professional abilities.

125 In the fifth place, the director of Directorate D and the head of Unit D 2, in order to 'destabilise' the applicant 'psychologically', refused to approve certain requests for annual leave submitted by her, the refusals having even, in certain instances, been given after an approval in principle. In addition, other requests were approved only belatedly, which forced the applicant, in one case at least, to withdraw her request for leave and to cancel a travel booking.

126 In the sixth place, the director of Directorate D and the head of Unit D 2 wrongly regarded as unjustified, in particular over the period from 8 September 2004 to 31 March 2005, several periods of sick leave, with the consequence for the applicant that she lost some days of annual leave for 2004 and 2005 and some deductions were made from her salary.

127 At the hearing, the applicant further claimed that the Commission did not act upon the opinion of the independent doctor who had, on 6 October 2004, recommended her reassignment out of the DG for Personnel and Administration.

128 In its defence, the Commission points out that Article 12a(3) of the Staff Regulations lists the criteria which must be fulfilled for it to be possible to speak of psychological harassment. Thus, under that article, the conduct in question must be improper, must extend over a period of time, must be repeated with a greater or lesser degree of frequency, with the intention of undermining the personality, dignity or physical or psychological integrity of a person. Behaviour to which an official is subjected can therefore be characterised as psychological harassment only if that behaviour is objectively aimed at discrediting him or at deliberately impairing his working conditions. Accordingly, in the Commission's view, such conduct should be objectively intentional in character, as is clear from settled case-law (see, to that effect, Joined Cases T-7/98, T-208/98 and T-109/99 *De Nicola* v *EIB* [2001] ECR-SC I-A-49 and II-185; Case T-136/03 *Schochaert* v *Council* [2004] ECR-SC I-A-215 and II-957; and Case T-144/03 *Schmit* v *Commission* [2005] ECR-SC I-A-101 and II-465).

129 However, the Commission notes that, in this case, none of the circumstances alleged by the applicant reveals conduct by her colleagues or her superiors which was intentionally aimed at discrediting her or impairing her working conditions.

2. Findings of the Tribunal

130 The first point to be made is that Article 12a(3) of the Staff Regulations, which entered into force on 1 May 2004, 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'.

131 In addition, the Memorandum of 2003 on psychological harassment, which is to be treated as an internal directive and which is binding on the Commission since the latter has not clearly stated its intention to depart from it by a reasoned and detailed decision (see, to that effect, Case 148/73 *Louwage* v *Commission* [1974] ECR 81, paragraph 12; Case 190/82 *Blomefield* v *Commission* [1983] ECR 3981, paragraph 20; and Joined Cases T-246/04 and T-71/05 *Wunenburger* v *Commission* [2007] ECR-SC I-A-0000 and II-0000, paragraph 127), stresses that the phenomenon of psychological harassment 'comes in many different guises: bullying, antagonism, pressure, offensive behaviour, even refusal to communicate – all examples of unacceptable behaviour which may, in isolation, appear of little consequence. When occurring on a regular basis, however, these kinds of behaviour can cause serious harm to the person at whom they are directed'. The Memorandum of 2003 on psychological harassment further makes clear that '[o]ffensive behaviour of this type stems from abuse of power or maliciousness', and that 'it can be perpetrated by both individuals and groups'.

132 It is important to point out that psychological harassment must be understood as a process which necessarily takes place over time and presupposes the existence of repeated or continuous reprehensible conduct. Article 12a(3) of the Staff Regulations requires that conduct, in order to be characterised as psychological harassment, take place 'over a period, [and be] repetitive or systematic', whereas the Memorandum of 2003 on psychological harassment stresses the necessary 'occurr[ence] on a regular basis' of such conduct.

133 Moreover, and contrary to what the Commission maintains, Article 12a(3) of the Staff Regulations, irrespective of the language version, does not in any way make the malicious intent of the alleged harasser a necessary criterion for classification as psychological harassment.

134 Article 12a(3) of the Staff Regulations defines psychological harassment as 'improper conduct' which requires, in order to be established, that two cumulative conditions be satisfied. The first condition relates to the existence of physical behaviour, spoken or written language, gestures or other acts which take place 'over a period' and are 'repetitive or systematic' and which are 'intentional'. The second condition, separated from the first by the preposition 'and', requires that such physical behaviour, spoken or written language, gestures or other acts have the effect of 'undermin[ing] the personality, dignity or physical or psychological integrity of any person'.

135 By virtue of the fact that the adjective 'intentional' applies to the first condition, and not to the second, it is possible to draw a twofold conclusion. Firstly, the physical behaviour, spoken or written language, gestures or other acts referred to by Article 12a(3) of the Staff Regulations must be intentional in character, which excludes from the scope of that provision reprehensible conduct which arises accidentally. Secondly, it is not, on the other hand, a requirement that such physical behaviour, spoken or written language, gestures or other acts were committed with the intention of undermining the personality, dignity or physical or psychological integrity of a person. In other words, there can be psychological harassment within the meaning of Article 12a(3) of the Staff Regulations without the harasser's having intended, by his reprehensible conduct, to discredit the victim or deliberately impair the latter's working conditions. It is sufficient that such reprehensible conduct, provided that it was committed intentionally, led objectively to such consequences.

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

137 It should also be pointed out that any interpretation of Article 12a(3) of the Staff Regulations which is based on the malicious intent of the alleged harasser would not be reconcilable with the definition of 'harassment' given by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16). After recalling, in Article 1, that its purpose is 'to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment', the directive clearly states, in Article 2(3), that '[h]arassment shall be deemed to be a form of discrimination … when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

138 The use, in Directive 2000/78, of the phrase 'with the purpose or effect' shows that the Community legislature intended, as is confirmed by recital 30 in the preamble to that directive, to ensure 'adequate judicial protection' for the victims of psychological harassment. Such protection could not be ensured if psychological harassment were to refer only to conduct with the purpose of undermining the personality of a person, in view of the great difficulty faced by the victims of behaviour intentionally aimed at harassing them psychologically in proving the reality of such intent as well as the motive behind that intent.

139 It would also hardly be likely that the Community legislature, having determined, by Directive 2000/78, that behaviour which, without having the purpose, nevertheless has the effect of undermining the dignity of a person constitutes harassment, would have decided, in 2004, on the occasion of the reform of the Staff Regulations, to reduce the level of judicial protection guaranteed to officials and other servants and, in adopting Article 12a(3) of the Staff Regulations, would have restricted psychological harassment solely to conduct which had the purpose of undermining the dignity of a person.

140 It is true that, in a number of judgments, the Court of First Instance has ruled that, in order to be characterised as psychological harassment, conduct must be objectively intentional in character and that an applicant, regardless of the subjective perception which he may have had of the facts alleged, must put forward a body of evidence proving that he was subjected to conduct aimed, objectively, at discrediting him or at deliberately impairing his working conditions (*De Nicola* v *EIB*, paragraph 286; *Schochaert* v *Council*, paragraph 41; and *Schmit* v *Commission*, paragraphs 64 and 65). However, the case-law referred to above cannot be effectively relied on in this case, in so far as, in any event, it was developed in cases involving conduct which occurred prior to the entry into force of Article 12a(3) of the Staff Regulations. It is true that the Court of First Instance, in the judgment in Case T-154/05 *Lo Giudice* v *Commission* [2007] ECR-SC I-A-0000 and II-0000, again applied that case-law to a case where some of the acts alleged against the administration post-dated the entry into force of Article 12a(3) of the Staff Regulations. However, it is not apparent from that judgment that the Court of First Instance expressly intended to interpret Article 12a(3) of the Staff Regulations as making the malicious intent of the alleged harasser a condition for the existence of psychological harassment.

141 Finally, the interpretation of Article 12a(3) of the Staff Regulations set out above cannot be called in question either by the provisions of the first sentence of Article 12a(4) of the Staff Regulations, relating to sexual harassment, or by those of the Decision of 2006 on psychological harassment and sexual harassment.

142 The first sentence of Article 12a(4) of the Staff Regulations states that '"[s]exual harassment" means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment'.

143 In that regard, it is noteworthy that the phrase 'which has the purpose or effect' figures in the first sentence of Article 12a(4) of the Staff Regulations, whereas it is absent from the wording of Article 12a(3) of the Staff Regulations.

144 However, such an absence cannot be construed as meaning that, so far as psychological harassment is concerned, only reprehensible conduct ‘with the purpose’ of discrediting a person or impairing their working conditions could be regarded as constituting such harassment. As has been stated, it is clear from the very wording of Article 12a(3) of the Staff Regulations that, for there to be psychological harassment within the meaning of that provision, it is sufficient that the reprehensible conduct to which it refers, namely ‘physical behaviour, spoken or written language, gestures or other acts’, ‘[has] undermine[d] the personality, dignity or physical or psychological integrity of any person’, regardless of the – immaterial – question whether that conduct was committed with the intention to harm.

145 The Decision of 2006 on psychological harassment and sexual harassment, which replaced the Memorandum of 2003 on psychological harassment, for its part, specifies that, ‘in line with the Staff Regulations, psychological harassment will only be considered to exist if the conduct of the alleged harasser is regarded as abusive, intentional, repetitive, sustained or systematic and intended, for instance, to discredit or undermine the person concerned’ and adds that ‘[t]hese criteria are cumulative …’.

146 The Decision of 2006 on psychological harassment and sexual harassment would therefore seem to indicate, prima facie, that only conduct intended ‘to discredit or undermine the person concerned’ is covered by psychological harassment. However, it is important to note that that decision confined itself, as the use of the phrase ‘for instance’ shows, to providing illustrations of reprehensible conduct capable of being regarded as constituting psychological harassment and did not intend to suggest that reprehensible conduct could be regarded as such only if it had the purpose, and not only the effect, of undermining the personality, dignity or physical or psychological integrity of a person. Moreover, a contrary interpretation of the Decision of 2006 on psychological harassment and sexual harassment would have the effect of rendering such a decision largely inoperative, on account, as has been stated, of the difficulty of adducing proof of the intention, on the part of an alleged harasser, to discredit or undermine someone.

147 It is in the light of all the foregoing considerations that a ruling must be given on the complaint of psychological harassment raised by the applicant, which involves examining the reality of the various forms of reprehensible conduct alleged by her against her superiors and establishing whether those forms of conduct, which can be grouped together in six categories, had the effect of objectively undermining her personality, dignity or physical or psychological integrity.

148 It is important to point out that only facts prior to the date on which the implied decision rejecting the request for assistance and the compensation claim took effect, that is, 3 September 2004, and which principally concern the conditions under which the applicant performed her duties, will be taken into account.

149 Admittedly, she also claims to have been subjected to psychological harassment in the period after 3 September 2004. However, the question of the existence of psychological harassment in respect of that period will not be considered in the present case. Firstly, that alleged psychological harassment, which, according to the applicant, is the consequence of non-compliance by the Commission with the provisions of Article 59 of the Staff Regulations by reason of the manner in which it dealt with her medical certificates, is not of the same nature as that of which she complains in respect of the period prior to 3 September 2004. Secondly, it is established that the applicant did not initiate any pre-litigation procedure for the purpose of obtaining compensation for the damage resulting from the psychological harassment which occurred after 3 September 2004. It must however be made clear that it is open to the applicant, if she believes herself to be justified in doing so, to submit a request seeking compensation for such damage.

a) With regard, firstly, to the circumstances in which the applicant’s probationary period was extended

150 Three complaints are, in essence, put forward by the applicant.

151 In her first complaint, the applicant maintains that the presence, in her first report at the expiry of the probationary period, of critical comments is attributable to the fact that the head of Unit B 2 provided the

director of Directorate B with unjustly negative information on the quality of her work, in order to make the applicant carry the responsibility for his own mistakes in the management of files.

152 It is established in that regard that the director of Directorate B, who was responsible for drawing up the first report at the expiry of the probationary period, made, in that report, some assessments which were critical of the applicant's work. Thus, he noted that she '[had] been unable to carry out, within reasonable times …, certain important tasks which [had] been entrusted to her' and that there had been 'some difficulties with relationships in the department'. He also observed in the applicant a 'lack of familiarity with the administrative and hierarchical system in force at the Commission'.

153 However, in addition to the fact that the applicant adduces no evidence in support of the claim that the inclusion of such assessments is attributable to an intention by the head of Unit B 2 to make her carry the responsibility for his own mistakes, it is apparent from documents in the file that, during the initial probationary period, the applicant was late in completing certain tasks which had been assigned to her, such as drawing up draft reports in dealing with a disciplinary matter. Moreover, criticisms of the applicant's professional abilities were also made by the head of the Social Dialogue Unit in which the applicant served, between 21 May and 15 October 2001, most of the period of extension of her probation.

154 The first complaint must therefore be dismissed without there being any need to hold the hearing sought by the applicant.

155 In her second complaint, the applicant asserts that her probation was extended without her having previously been the subject of the slightest criticism on the part of the head of Unit B 2.

156 In that regard, although it is true that it has been held that the administration is under no obligation to warn a probationary official at any particular time that his services are unsatisfactory (see Case 3/84 *Patrinos* v *ESC* [1985] ECR 1421, paragraph 19, and Case T-96/95 *Rozand-Lambiotte* v *Commission* [1997] ECR-SC I-A-35 and II-97, paragraph 102), it is nevertheless important to point out that, in his administrative inquiry report, the hearing officer 'regret[ted] the circumstances which surrounded the drawing-up of the [first report at the expiry of the probationary period]' and criticised, in particular, as contrary to the duty to have regard for the welfare of officials, the fact that the applicant '[had] not [had] the opportunity either to explain herself in good time regarding the weaknesses to which her [h]ead of [u]nit [had] drawn attention or, above all, the opportunity to remedy them by agreeing, with her superiors, on the means of achieving that'. Similarly, the hearing officer expressly referred to 'the lack of dialogue between [the applicant] and her superiors prior to the announcement which was made to her that her [first] probationary report would be negative'. The applicant is therefore justified in complaining that the Commission extended her probationary period without having previously given her any warning.

157 The second complaint must therefore be upheld.

158 So far as concerns the third complaint, that the Joint Reports Committee, having been wrongly informed that the applicant had agreed to the extension of her probationary period, did not, on that ground, either give her a hearing or give such a hearing to the persons whose views she wished to be heard, it is established, as the Commission expressly acknowledged in the decision of 20 September 2001 by which it rejected the complaint directed against the decision extending the probationary period, that the Joint Reports Committee '[had] been informed by mistake that the [applicant] had agreed to the extension of the probationary period in another unit' and pointed out that this mistake 'stem[med] from the fact that the [applicant] had proposed her reassignment to [Unit B 4] in the context of [the] notified extension of her probationary period, while at the same time being unable to give her agreement to the extension of the probationary period itself'. Admittedly, no provision of the Staff Regulations nor any other legislation required the Joint Reports Committee to hold hearings. However, it is quite possible that the decision of the Joint Reports Committee not to give a hearing either to the applicant or to the persons whose views she wished to be heard was based on such incorrect information.

159 It follows that the third complaint must also be upheld.

160 The applicant is therefore justified in maintaining that the Commission committed certain faults in connection with the extension of her probationary period. However, such faults are not, by themselves, so serious that they should be regarded as having, for the purposes of Article 12a(3) of the Staff Regulations, undermined her personality, dignity or physical or psychological integrity.

b) With regard, secondly, to the alleged fact that the Commission isolated the applicant

161 It is important to bear in mind that the applicant, between January 2003 and her being retired on the ground of invalidity on 31 August 2005, occupied successively three offices, the first being on the second floor of the Montoyer 34 building (between January and June 2003), the second on a mezzanine between the ground floor and the first floor of the Science 11 building (between June 2003 and the summer of 2004) and the third on the eighth floor of the Science 11 building (as from the summer of 2004).

162 As regards the first of those offices, it is apparent from the material in the case-file that it was a long way from that of the head of Unit D 2 and that it was also on a floor where, because of restructuring operations, the applicant was the only person working.

163 As regards the second office, situated on the mezzanine of the Science 11 building, the hearing officer, after noting her 'isolation not only from the rest of the [applicant's] unit, but also from her colleagues in other units or other directorates', pointed out that '[t]he highly atypical and remote location [of that office] was probably an obstacle to the proper integration of its occupant within the department to which she was assigned', even adding that 'the fact that she was based permanently in that office [might] have adversely affected [the applicant]'s morale'.

164 In those circumstances, even though the applicant does not prove that the offices which were allocated to her lacked any suitable equipment, or indeed that her immediate superiors refused to speak to her, the Commission must be regarded as having committed a fault by allocating isolated offices to the applicant until the summer of 2004.

165 It should, however, be noted that the hearing officer, while criticising it, did provide an explanation for that isolation. He pointed out that, as a consequence of the creation within the Commission of several new operational entities and of the staff movements which had resulted from that, Unit D 2 had found itself dispersed over four floors of the Science 11 building (floors 7, 8, 9 and 10), which made it possible to understand, from his point of view, 'the reasons why [the applicant] had been obliged to change offices on several occasions'.

166 Moreover, certain approaches were made by the applicant's superiors in order to reach a more satisfactory solution as regards the office which she was to occupy.

167 Thus, on 3 July 2003, the deputy head of Unit D 2 sent to the applicant an e-mail in which he suggested, pending the reunion of the whole of Unit D 2 on floors 9 and 10 of the Science 11 building, that she move out and base herself on floor 7 of that building, in an office occupied by one of her colleagues. However, according to the wording itself of that e-mail, such a move had to be merely 'temporary', which explains why the applicant, by an e-mail of 7 July 2003, replied to that suggestion by saying that she was unable to decide and that she preferred to wait until she was back from her annual leave to see whether a 'permanent solution' could be found 'towards August'.

168 Similarly, on 11 September 2003, the deputy head of Unit D 2 sent to the inventory property manager an e-mail to remind him of the need to settle the question of the applicant's office. After recalling that they had already discussed this question together before the 2003 summer holidays, he asked him to 'make available to [Unit D 2] an office suitable for [the applicant] and as close as possible to floors 9 and 10 of the [Science 11 building]'. He added that '[t]his matter [wa]s assuming a degree of urgency, in so far as the unsuitability of [the applicant's] present office on the ground floor [of the Science 11 building] appear[ed] to be seriously affecting [her] efficiency and call[ed] for an immediate solution'.

169 Accordingly, and even though the approaches described above were not followed up, the allocation of isolated offices to the applicant, while open to criticism, cannot be regarded as having undermined her personality, dignity or physical or psychological integrity.

c) With regard, thirdly, to the alleged fact that no tasks were assigned to the applicant between January and June 2003

170 It is apparent from the material in the case-file that the applicant was not assigned any tasks from the time of her posting to Unit D 2 on 1 January 2003 and throughout almost all the first half of 2003, and that it was not until 10 June 2003 that a description of her job was drawn up and communicated to her. In that regard, the hearing officer pointed out that 'the mere fact that an official had to wait almost six months to find out exactly what was expected of her in the department to which she was assigned [could] reasonably be perceived by that official as improper conduct, particularly when it occur[red] in the context of an already confrontational relationship with her professional environment'.

171 Finally, although the Commission points out that the applicant's stay in Unit D 2 was originally supposed to be of short duration, since it was already envisaged that she would be transferred, in the first few months of 2003, to the Directorate for Security of the DG for Personnel and Administration, that circumstance, which did not materialise in any case, is in no way such as to justify the fact that no tasks were assigned to her in the first few months of 2003. Equally, the fact that the applicant was frequently absent due to illness or annual leave during the first half of that year did not authorise the administration to neglect the obligation incumbent on it to set the applicant some tasks.

172 However, having regard to the circumstances of the present case, and in particular to the original plans to reassign the applicant out of Unit D 2, the belated assignment of tasks to the applicant cannot, on its own, be regarded as having undermined her personality, dignity or physical or psychological integrity.

d) With regard, fourthly, to the alleged fact that the Commission spread defamatory rumours concerning the applicant's professional abilities

173 The applicant does not adduce any evidence in support of the assertion that the hierarchy of the DG for Personnel and Administration spread defamatory rumours concerning her professional abilities.

174 The complaint raised on that ground cannot therefore be upheld.

e) With regard, fifthly, to the alleged fact that the Commission refused certain requests for annual leave and approved others belatedly

175 It is important, as a preliminary point, to recall that although, under the first paragraph of Article 57 of the Staff Regulations, '[o]fficials shall be entitled to annual leave of not less than 24 working days nor more than 30 working days', it has been ruled that a refusal of annual leave in order to ensure the proper functioning of the service cannot, as such, be regarded as a manifestation of psychological harassment (*Schmit* v *Commission*, paragraph 78).

176 In the present case, the applicant complains that the Commission refused to grant, before the implied decision rejecting the request for assistance and the compensation claim took effect on 3 September 2004, three requests for annual leave in respect of the periods from 10 May to 30 June 2004, from 19 May to 8 June 2004 and from 5 July to 13 August 2004. In the applicant's view, such refusals are accounted for by the administration's intention to 'destabilise' her 'psychologically'.

177 So far as concerns the refusal of the request for annual leave made on 7 May 2004 and relating to the period from 10 May to 30 June 2004, it is apparent from the material in the case-file, in particular the e-mails sent to her on 7 and 10 May 2004, that that refusal was based on a legitimate reason, namely the need, in consequence of the medical officer's opinion of 7 May 2004 stating that 'a change of post was desirable for the sake of [the applicant]'s health', to examine with her the various possible ways of

securing her reassignment out of the DG for Personnel and Administration. In any case, it is established that, on 10 May 2004, the applicant actually met with the director of Directorate D and that, during that meeting, it was decided that the applicant's curriculum vitae would be sent to other directorates-general. Moreover, the applicant herself, by e-mail of 11 May 2004, informed the assistant to the director of Directorate D that she in fact wished to take annual leave for the period from 19 May to 8 June 2004.

178 So far as concerns the request for annual leave relating to the period from 19 May to 8 June 2004, it must be pointed out that the reason for the rejection of that request, in this instance the need to hold, in connection with the drawing-up of the January-October 2003 CDR, the formal dialogue provided for by Article 8(5) of the GIP, was also legitimate, since the provisions of Article 8(14) of the GIP stipulate that '[a]ll annual reviews must be declared closed by the end of April at the latest'.

179 The same applies a fortiori to the request for annual leave relating to the period from 5 July to 13 August 2004, the refusal of which, explained by an e-mail sent on 9 June 2004 by the director of Directorate D to the applicant, was justified by the need, in order not to jeopardise the promotion prospects of all the officials in Directorate D, to arrange, in consequence of the request for review made by the applicant against her January-October 2003 CDR, the formal dialogue with the countersigning officer, in accordance with Article 8(10) of the GIP.

180 On the other hand, the applicant is right in complaining that the Commission was slow to grant her request for annual leave relating to the period from 19 July to 27 August 2004. That request, submitted to 'SIC Congé' on 21 June 2004, was not approved until 2 August 2004, that is, more than two weeks after the date from which the applicant wished to be absent. It is also important to note that that request was approved, and the corresponding days deducted from the applicant's balance of annual leave, even though she had, on 5 July 2004, submitted a medical certificate for the period from 17 July to 27 August 2004, that is, substantially the same period as that covered by the request for annual leave, and that that certificate had not been challenged by the administration.

181 It follows from the foregoing that, as regards the question of annual leave, the only improper conduct which must be attributed to the Commission concerns the manner in which the request for annual leave relating to the period from 19 July to 27 August 2004 was dealt with. However, such conduct cannot, on its own, be regarded as having had the effect of undermining the personality, dignity or physical or psychological integrity of the applicant.

f) With regard, sixthly, to the Commission's refusal to regard the absences owing to illness as justified

182 It is common ground that the Commission required the applicant, who had produced a medical certificate relating to the period from 16 April to 11 June 2004, to undergo a medical examination. After the medical examination concluded, in an opinion of 7 May 2004, that the applicant was fit to do her work, while stating that 'a change of post was desirable for the sake of [her] health', it is apparent from the material in the case-file that she did not take up the option afforded to her by the fifth subparagraph of Article 59(1) of the Staff Regulations, to submit to the institution a request that the matter be referred for an independent opinion.

183 Consequently, the applicant has not established that her immediate superiors, prior to the implied decision rejecting the request for assistance and the compensation claim, acted unlawfully in the treatment of her absences from work owing to illness.

184 It follows from all the foregoing that, although some of the matters relied on by the applicant are in the nature of wrongful acts, none of them, considered in isolation, can be regarded as constituting 'improper conduct' within the meaning of Article 12a(3) of the Staff Regulations.

185 However, the question remains whether, taken together, those same matters could be considered to constitute such 'improper conduct'.

186 The hearing officer gave a negative answer to that question, taking the view that ‘the behaviour or acts in question [were not] vitiated by intentionality on the part of the person(s) responsible for them in the sense that they were designed to undermine [her] personality, dignity or integrity’ and pointing out that there was no ‘individual or concerted intention on the part of several persons to cause damage [to her]’.

187 However, the Tribunal cannot rely on such an assessment, since the hearing officer took as his basis in making it, an incorrect interpretation of Article 12a(3) of the Staff Regulations, making the malicious intent of the alleged harasser a condition for the existence of psychological harassment.

188 Nevertheless, there is no basis for regarding the facts alleged by the applicant against her superiors as being among those contemplated by Article 12a(3) of the Staff Regulations. Even considered in their totality, those reprehensible acts, even if they approximate to acts of psychological harassment and were, as the hearing officer points out, experienced as such by the applicant, are not sufficiently serious to have objectively had the effect, on the date of the implied decision rejecting the request for assistance and the compensation claim, of undermining her personality, dignity or physical or psychological integrity.

189 It follows from all the foregoing that the applicant is not justified in maintaining that she was the victim of psychological harassment.

C – The claims seeking annulment of the implied decision rejecting the request for assistance

1. Admissibility

a) Arguments of the parties

190 The Commission contends in essence that the fact that no reply to the request for assistance was received did not give rise, at the end of the period of four months from the date on which that request was made, to an act adversely affecting the person concerned. The Commission explains that, at the end of that period of four months, it did not reject, even implicitly, the request for assistance, since it was required to await the findings of the administrative inquiry before ruling on that request. It was, it adds, only on 16 September 2005 that it finally rejected the request for assistance, after the administrative inquiry had demonstrated the unfounded nature of the claims of psychological harassment. In those circumstances, the abovementioned claims are inadmissible owing to their premature nature.

191 The applicant claims that the plea of inadmissibility should be rejected.

b) Findings of the Tribunal

192 Article 90(1) of the Staff Regulations provides:

‘Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.’

193 In this case, as has been stated, the applicant sought assistance from the Commission by letter of 29 April 2004. The failure to reply to that letter, which contained a request within the meaning of Article 90(1) of the Staff Regulations, therefore gave rise, at the end of a period of four months, to an implied decision rejecting that request, which constitutes an act adversely affecting the applicant.

194 That conclusion cannot be invalidated by the Commission’s argument that it refrained, at the end of the period of four months provided for in Article 90(1) of the Staff Regulations, from adopting a position on the request for assistance on account of psychological harassment, since it was required, before giving a decision, to await the findings of the administrative inquiry.

195 Although the administration is under an obligation, when an official who is asking his institution for protection provides some evidence of the reality of the attacks of which he claims he was the victim, to take the necessary measures, in particular to carry out an inquiry to determine the facts which gave rise to the complaint (*Lo Giudice* v *Commission*, paragraph 136), such an obligation cannot allow the institution concerned to derogate from the provisions of Article 90(1) of the Staff Regulations, which enable the official to prompt the administration to adopt a position constituting a decision within a set period (Case T-135/89 *Pfloeschner* v *Commission* [1990] ECR II-153, paragraph 17, and Case T-223/95 *Ronchi* v *Commission* [1997] ECR-SC I-A-321 and II-879, paragraph 31).

196 Although it is true that the Commission could not, prior to the conclusion of the administrative inquiry, be considered to have definitively rejected the request for assistance, the fact nevertheless remains that, even before definitively adopting a position on such a request, the Commission was required to adopt certain measures, at the very least as a precaution. The failure to adopt such measures, as a consequence of the silence of the administration on that request, is capable of adversely affecting the applicant, as occurred in the instant case.

197 In those circumstances, the plea of inadmissibility alleging that the abovementioned claims are not directed against any act adversely affecting the applicant cannot be upheld.

198 It is however important to observe that, by a note of 8 September 2004, the hearing officer appointed by the Secretary-General of the Commission received authority from the latter to 'establish the truth of the claims made, as regards in particular the conduct of the official(s) whose names are mentioned in the file, and thus make it possible to determine the truth of the situation and any action which may, where appropriate, have to be taken'. In addition, having held, between 6 October and 22 December 2004, a series of hearings, the hearing officer, on 21 March 2005, sent to the Secretary-General of the Commission the report drawn up at the conclusion of the administrative inquiry.

199 It must therefore be held that, although, prior to the commencement of the present action, the administration did not take all the measures of assistance which the applicant had sought, it nevertheless granted the measure of administrative inquiry requested by her.

200 It follows from the foregoing that the applicant is indeed entitled to contest the implied decision rejecting her request for assistance, save in regard to the request seeking the opening of an inquiry. In the latter respect only, the applicant's claims are inadmissible in the absence of any act adversely affecting her at the time of bringing the action.

2. Merits

a) Arguments of the parties

201 Although the applicant raises two pleas in law, alleging, in the case of the first, infringement of Article 24 of the Staff Regulations and, in the case of the second, failure to comply with the duty to have regard for the welfare of officials, those pleas in law, which are based in essence on the same line of argument, must be examined together.

202 The applicant claims that the Commission did not reply to her request for assistance with the rapidity and solicitude called for by the circumstances and did not, in particular, appoint her to a post outside the DG for Personnel and Administration, even though, as long ago as 18 May 2004, the psychiatrist, to whom the Medical Service had entrusted the task of drawing up a psychiatric report on the applicant, pointed out, in his report, that '[s]ince the problem is of a social nature (a dispute within her [i]nstitution), the solution … therefore [had to] be adopted at the social level (reintegration in another [d]irectorate-[g]eneral)'.

203 In its defence, the Commission contends that there can be no complaint against it for not having appointed the applicant to a post outside the DG for Personnel and Administration, since she had not been the victim of any psychological harassment.

b) Findings of the Tribunal

204 Under the first paragraph of Article 24 of the Staff Regulations, '[t]he Communities 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'.

205 It is important to recall that, by reason of the duty to provide assistance, the administration must, when faced with an incident which is incompatible with the good order and tranquillity of the service, intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to ascertaining the facts and, consequently, taking the appropriate action in full knowledge of the facts (Case 224/87 *Koutchoumoff* v *Commission* [1989] ECR 99, paragraphs 15 and 16; Case T-5/92 *Tallarico* v *Parliament* [1993] ECR II-477, paragraph 31; and Case T-136/98 *Campogrande* v *Commission* [2000] ECR-SC I-A-267 and II-1225, paragraph 42).

206 In the present case, since the reality of the psychological harassment has not been established by the Tribunal, the applicant cannot complain that the Commission did not take every measure to protect her against such harassment.

207 However, it is important to bear in mind that the Memorandum of 2003 on psychological harassment provides that, '[a]t the least suspicion of psychological harassment, it may be possible to move staff from their post' and that such measures, 'which will depend on the needs of each particular situation', are intended 'to give the alleged victim a breathing space in which to re-establish themselves'.

208 In the present case, it must be observed that, in her letter of 29 April 2004, the applicant first complained that the head of Unit B 2, the unit to which she had been assigned on her appointment by the Commission as a probationary official, had provided the director of Directorate B, who was responsible for drawing up the first probationary report, with unjustly negative information on her professional abilities, with the sole aim of attributing to her the responsibility for mistakes which he himself had made. In the same letter, the applicant complains that her superiors, in particular as from her assignment, on 1 January 2003, to Unit 01, isolated her professionally by allocating to her an office far away from the rest of the unit and without any equipment, did not entrust her with any work appropriate to her skill level, prevented her transfer out of the DG for Personnel and Administration and, to that end, provided other directorates-general with unfavourable information on her abilities. Also in that letter, the applicant asserted that she had been a recipient of a list of members of the unit on which her name no longer appeared. Finally, it is pertinent that, among the many documents which the applicant attached to her request for assistance, there was a list of persons able, according to applicant, to confirm the existence of the psychological harassment alleged.

209 Consequently, the importance and seriousness of the facts alleged by the applicant in her request for assistance revealed, if not the existence of psychological harassment, at least a 'suspicion of psychological harassment' within the meaning of the Memorandum of 2003 on psychological harassment and required the Commission to take, even before carrying out an inquiry and ascertaining the reality of her complaints, measures to 'move [her] from [her] post'.

210 However, it is established that, on the date when the implied decision rejecting the request for assistance took effect, no temporary measures of that nature had been adopted by the Commission and that the applicant had not been the subject of any decision to appoint her to a post outside the DG for Personnel and Administration or even out of Unit D 2, to which she was then assigned.

211 Admittedly, it is apparent from the material in the case-file that certain efforts were made by the DG for Personnel and Administration, from autumn 2003 onwards, to enable the applicant to find a post outside that directorate-general and that, in particular, the director of Directorate D, on 13 May 2004, sent her curriculum vitae to five other directorates-general, stating that the DG for Personnel and Administration had expressed its agreement for the applicant to be reassigned together with her post However, those various attempts cannot be regarded as sufficient, since the Commission was under an obligation not

merely to assist the applicant in her search for a post, but to appoint her to a post outside the DG for Personnel and Administration.

212 Moreover, it is important to note that, by a letter of 11 June 2004, the director of the IDOC himself told the Secretary-General of the Commission that the facts alleged by the applicant in her request for assistance seemed to him to be sufficiently serious to justify the opening of an administrative inquiry, ‘either to demonstrate the existence of individual blame, or to clear the names of officials unjustly implicated’.

213 In those circumstances, the applicant is justified in maintaining that, by not moving her from her post, before even opening an administrative inquiry, the Commission failed to respond with all the necessary diligence to her request for assistance.

214 It follows that the implied decision rejecting the request for assistance must be annulled, in so far as that decision declined to move the applicant temporarily from her post.

D – The claims seeking annulment of the 2003 CDRs

1. Arguments of the parties

215 The Commission contends that the abovementioned claims are inadmissible on the ground that the complaint directed against the 2003 CDRs was submitted out of time. It points out that the applicant, who had been informed, by a letter of 21 September 2004, of the definitive closure of her 2003 CDRs, did not submit her complaint to the Appeals Unit of the DG for Personnel and Administration until 5 January 2005, that is, after the expiry of the period of three months prescribed by Article 90(2) of the Staff Regulations. The Commission adds that the person concerned, in view of her ‘particular situation’, could, in passing, while at her place of work, have enquired of the DG for Personnel and Administration as to the exact stage reached by her 2003 CDRs or, at the very least, consulted her file on the computerised system ‘SysPer 2’. Given that her 2003 CDRs were declared closed on 13 and 14 July 2004, she would therefore have been in a position to acquaint herself with that fact just after or, in any event, at the latest when she received the letter of 21 September 2004 informing her of the administrative closure of those CDRs.

216 In the alternative, should the Tribunal consider the abovementioned claims admissible, the Commission points out that the applicant was retired on grounds of invalidity after the present action was brought and that she no longer has an interest in seeking the annulment of the 2003 CDRs.

217 In her reply, the applicant contends that her claims seeking annulment of her 2003 CDRs are admissible.

2. Findings of the Tribunal

218 As regards the admissibility of the abovementioned claims, it is important to recall that, under Article 90(2) of the Staff Regulations, any person to whom those Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him and that such a complaint must be lodged within three months. That period starts to run on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person.

219 Moreover, in order for a decision to be duly notified for the purposes of Article 90(2) of the Staff Regulations, it must not only have been communicated to its addressee, but the latter must also have been able to have effective knowledge of its content (see Case 5/76 *Jänsch* v *Commission* [1976] ECR 1027, paragraph 10, and Case T-311/04 *Buendía Sierra* v *Commission* [2006] ECR II-4137, paragraph 121).

220 Finally, it is for the administration which relies on the belated nature of a complaint to adduce proof of the date on which the decision was notified, that is to say, communicated to its addressee (see, by analogy, Case T-94/92 *X* v *Commission* [1994] ECR-SC I-A-149 and II-481, paragraph 22).

221 In this case, the Commission contends that the three-month period laid down in Article 90(2) of the Staff Regulations started to run on 21 September 2004, the date which appears on the letter by which the head of the Human Resources – ADMIN, Internal Reforms Unit informed the applicant that, in the 2004 promotion procedure, the director-general of the DG for Personnel and Administration had decided, in the light of the overall mark of 8/20 which she had been awarded in the appraisal exercise relating to 2003, not to award her any priority points. However, apart from the fact that no document in the case-file makes it possible to know the date on which that letter was notified, it is important to point out that it cannot, since the 2003 CDRs were not annexed to it, be regarded as having enabled the applicant to have effective knowledge of those CDRs.

222 As for the argument that the applicant, in view of her 'particular situation', could, in passing, while at her place of work, have enquired from the DG for Personnel and Administration as to the precise stage reached by her 2003 CDRs or, at the very least, consulted her file on SysPer 2, it cannot be accepted, since, as noted above, the period for lodging a complaint against an act adversely affecting a person starts to run, in accordance with Article 90(2) of the Staff Regulations, only as from the date of notification of the act to the person concerned, but in no case later than the date on which the latter received such notification.

223 In those circumstances, since the Commission has provided no evidence of the date on which the 2003 CDRs were notified to the applicant or communicated to her, the plea of inadmissibility based on the belated nature of the abovementioned claims must be rejected.

224 It follows from the foregoing that the claims seeking annulment of the 2003 CDRs were admissible on the date of commencement of the present action.

225 However, that consideration cannot preclude the Tribunal from examining whether the applicant, after the commencement of the present action, retained a personal interest in the annulment of her 2003 CDRs (see Case T-159/98 *Torre and Others* v *Commission* [2001] ECR-SC I-A-83 and II-395, paragraph 30, and Case T-105/03 *Dionyssopoulou* v *Council* [2005] ECR-SC I-A-137 and II-621, paragraph 18, and the case-law cited).

226 It must be recalled in this respect that, as an internal document, the primary function of the periodic report, known as the CDR in the system of appraisal in force within the Commission, is to provide the administration with periodic information on the performance of their duties by officials (Joined Cases 6/79 and 97/79 *Grassi* v *Council* [1980] ECR 2141, paragraph 20, and Case T-59/96 *Burban* v *Parliament* [1997] ECR-SC I-A-109 and II-331, paragraph 73).

227 In regard to the official, the periodic report plays an important role in his career progress, mainly as far as concerns transfer and promotion. Consequently, in principle, it affects the interest of the person appraised only until the termination of his service. After that termination, an official no longer has any legal interest in continuing an action brought against a staff report, unless he establishes the existence of a special circumstance proving a current, personal interest in obtaining the annulment of the report in question (*Dionyssopoulou* v *Council*, paragraph 20).

228 In this case, it is established that the applicant was retired and granted an invalidity allowance by decision of the appointing authority of 23 August 2005 with effect from 31 August 2005. Moreover, the Invalidity Committee considered, 'faced with the permanent nature of the pathology which led to the invalidity, that no additional medical examination [was] necessary'. Accordingly, amendment of the 2003 CDRs could not entail any consequences for the applicant's career. Moreover, the applicant does not establish or even rely on the existence of a special circumstance justifying the retention of a current, personal interest in bringing an action for annulment.

229 That conclusion cannot be called in question by the solution identified by the Tribunal in Case F-44/05 *Strack* v *Commission* [2008] ECR-SC I-A-1-000 and II-0000. Whilst, in that case, it was held that an official, although retired on the ground of invalidity, nevertheless retained an interest in seeking annulment of the decision which rejected his candidature for a post, it is important to point out that, unlike in the

present proceedings, in that case it had not been established that the pathology which led to the invalidity of that official was permanent in nature and that no additional medical examination was necessary.

230 In those circumstances, there is no longer any need to rule on the claim for annulment of the 2003 CDRs.

E – The claims for damages

231 The compensation claims raised by the applicant can be subdivided in essence into three parts. The applicant seeks compensation for the damage resulting, firstly, from the psychological harassment of which she claims to have been the victim, secondly, from the unlawfulness of the implied decision rejecting the request for assistance and, thirdly, from the unlawfulness of the 2003 CDRs and of the circumstances in which they were communicated to her.

1. The claims seeking compensation for the damage resulting from the alleged psychological harassment

a) Arguments of the parties

232 The applicant claims that the psychological harassment of which she was the victim seriously affected her state of health, as demonstrated by the medical certificates from her own doctor, the medical opinions of doctors in the Medical Service and the opinion of the independent doctor chosen under the procedure referred to in Article 59(1) of the Staff Regulations. These showed that there was significant non-material damage, consisting of her unfitness to perform her duties normally within her unit, and material damage in the form of a loss of opportunity in her career development and her legitimate right to promotion.

233 In its defence, the Commission contends that the abovementioned compensation claims should be rejected, explaining that the applicant was not the subject of any psychological harassment.

b) Findings of the Tribunal

234 It is clear from the settled case-law relating to the employment of officials that the Community can only be held liable for damages if a number of conditions are satisfied, namely the illegality of the allegedly wrongful act committed by the institution, the actual harm suffered, and the existence of a causal link between the alleged act and the damage alleged to have been suffered (Case 111/86 *Delauche* v *Commission* [1987] ECR 5345, paragraph 30; Case T-234/97 *Rasmussen* v *Commission* [1998] ECR-SC I-A-507 and II-1533, paragraph 71; and Case T-281/01 *Huygens* v *Commission* [2004] ECR-SC I-A-203 and II-903, paragraph 51).

235 It is therefore necessary to examine whether any unlawful conduct can be attributed to the Commission and then, if so, to establish the existence of any damage having a causal link with that unlawful conduct.

The existence of unlawful conduct

236 Although, as has been stated above, the applicant is not justified in maintaining that she was the victim of psychological harassment, the fact remains, as was noted, moreover, by the hearing officer, that some of the facts relied on by the person concerned in support of her compensation claim are, considered as a whole, such as to reveal a certain failure by the Commission to comply with its duty to have regard for the welfare of officials. This applies, in particular, to the circumstances in which the applicant's probationary period was extended (paragraphs 155 to 160 of this judgment), the allocation to her of isolated offices (paragraphs 161 to 169 of this judgment), the failure to set any tasks between January and June 2003 (paragraphs 170 to 172), or the circumstances in which her request for annual leave relating to the period from 19 July to 27 August 2004 was dealt with (paragraphs 180 and 181 of this judgment).

237 It follows that the first condition required for the Commission to be held liable, in this case the existence of unlawful conduct, is satisfied.

The existence of damage linked with the unlawful conduct

238 So far as concerns the material damage alleged, the person concerned claims that she is suffering a loss of remuneration on account of her retirement on the ground of invalidity. She must therefore be regarded, by raising such a claim, as asserting that her retirement on the ground of invalidity is the consequence of an occupational disease due to the administrative faults committed by her administration.

239 In that regard, it must be recalled, as has already been ruled (Case F-23/05 *Giraudy* v *Commission* [2007] ECR-SC I-A-0000 and II-0000, paragraph 193), that the Tribunal does not have jurisdiction to rule on the causal connection existing between the conditions of service of an official and the illness which he relies on. Article 18 of the common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease ('the Insurance Rules') provides that the decision recognising the occupational nature of a disease is to be taken by the appointing authority on the basis of the findings of the doctor(s) appointed by the institution and, where the official so requests, after consulting the Medical Committee referred to in Article 22 of the Insurance Rules. Article 11(2) of the Insurance Rules provides that, where an official sustains total permanent invalidity as a result of an accident or an occupational disease, he is to be paid the lump sum provided for in Article 73(2)(b) of the Staff Regulations, namely a lump sum equal to eight times his annual basic salary calculated on the basis of the monthly amounts of salary received during the 12 months before the accident.

240 The scheme established pursuant to Article 73 of the Staff Regulations therefore provides for lump-sum compensation in case of accident or occupational disease, without there being any need for the person concerned to prove any fault on the part of the institution. The case-law makes clear that it is only in circumstances where the staff insurance scheme does not permit appropriate compensation for the injury suffered that the official is entitled to seek additional compensation (see, to that effect, Joined Cases 169/83 and 136/84 *Leussink* v *Commission* [1986] ECR 2801, paragraph 13; Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraph 22; Case T-165/95 *Lucaccioni* v *Commission* [1998] ECR-SC I-A-203 and II-627, paragraph 74; and Case T-300/97 *Latino* v *Commission* [1999] ECR-SC I-A-259 and II-1263, paragraph 95).

241 In this case, it is apparent from the material in the case-file that the applicant, by a memorandum submitted on 17 October 2005, brought before the Commission a request for the recognition, as an occupational disease, under Article 73 of the Staff Regulations, of the 'anxio-depressive syndrome' from which she claimed to be suffering. However, the procedure for the recognition of the occupational nature of the pathologies from which she claims to be suffering is still ongoing. It follows that the abovementioned claim for compensation is premature and, that being so, cannot be upheld.

242 On the other hand, as regards the non-material damage of which the applicant claims to have been the victim, the breaches by the Commission of its duty to have regard for the welfare of officials contributed to the applicant's isolation within her unit and caused her damage for which fair compensation will be made by awarding her the sum of EUR 500.

2. The claims seeking compensation for the damage resulting from the unlawfulness of the implied decision rejecting the request for assistance

a) Admissibility

Arguments of the parties

243 The Commission challenges the admissibility of the claims seeking compensation for the damage resulting from the implied decision rejecting the request for assistance. It maintains that, since the claims seeking annulment of that decision are inadmissible on account of their premature nature, the claims seeking compensation for the damage caused by that decision should, in consequence, be rejected as inadmissible.

244 The applicant contends that the abovementioned compensation claims are admissible.

Findings of the Tribunal

245 Under the system of legal remedies established by Articles 90 and 91 of the Staff Regulations, an action for damages, which constitutes an autonomous legal remedy separate from the action for annulment, is admissible only if it has been preceded by a pre-litigation procedure in accordance with the provisions of the Staff Regulations. That procedure differs according to whether the damage for which reparation is sought results from an act adversely affecting a person, within the meaning of Article 90(2) of the Staff Regulations, or from conduct on the part of the administration which contains nothing in the nature of a decision. In the former case, it is for the person concerned to submit to the administration, within the prescribed time-limit, a complaint directed against the act in question. In the latter case, on the other hand, the administrative procedure must commence with the submission of a request, within the meaning of Article 90(1) of the Staff Regulations, for compensation and be followed, where appropriate, by a complaint against the decision rejecting that request (Case T-500/93 *Y* v *Court of Justice* [1996] ECR-SC I-A-335 and II-977, paragraph 64).

246 Where there is a direct link between an action for annulment and a claim for compensation, the latter is admissible as incidental to the action for annulment, without necessarily having to be preceded by a request from the person concerned to the appointing authority for compensation for the damage allegedly suffered and by a complaint challenging the validity of the implied or express rejection of that request (Joined Cases T-17/90, T-28/91 and T-17/92 *Camara Alloisio and Others* v *Commission* [1993] ECR II-841, paragraph 46, and *Y* v *Court of Justice*, paragraph 66).

247 In the instant case, the claims seeking compensation for the damage caused by the implied decision rejecting the request for assistance must be found to have a direct link with the claims seeking annulment of that decision. Those latter claims have been held admissible, except in so far as they concern the refusal to conduct an administrative inquiry. To that extent, the abovementioned compensation claims are also admissible.

b) Merits

Arguments of the parties

248 The applicant claims that she suffered material and non-material damage as a result of the unlawfulness of the implied decision rejecting the request for assistance. As regards, in particular, the material damage, she maintains that the Commission's failure to take any measure of assistance, added to the psychological harassment of which she was the victim, resulted in her being retired on the ground of invalidity, in such a way that the damage she suffered is assessed at the total sum of EUR 781 906.43, representing the difference between, on the one hand, the remuneration and pension which she would have received if she had not been retired on the ground of invalidity, and, on the other, the invalidity allowance which she receives and the pension which will be paid to her in the future.

249 In its defence, the Commission contends that, since the applicant has not proved the unlawfulness of the conduct complained of, the claim for compensation should be declared unfounded. In the alternative, she has failed to adduce any hard evidence proving the existence and a fortiori the extent of any genuine damage, or any causal link between the alleged damage and the alleged conduct complained of. Finally, if the Tribunal were to consider that the claims for annulment made by the applicant are well founded, those annulments would in themselves compensate for the non-material damage.

Findings of the Tribunal

250 As has been stated above, the Commission rendered its implied decision rejecting the request for assistance unlawful by not taking, preventively, any measure to move the applicant out of the DG for Personnel and Administration, even though the importance and seriousness of the facts alleged by her in

her request for assistance revealed a ‘suspicion of psychological harassment’ within the meaning of the Memorandum of 2003 on psychological harassment.

251 Moreover, it must be pointed out that, on the date when the implied decision rejecting the request for assistance took effect, the administrative inquiry had not yet been opened, since it was not until 8 September 2004 that the hearing officer received authority from the Secretary-General of the Commission to conduct such an inquiry and the first hearings held by him did not begin until October 2004.

252 As to the existence of damage linked with the unlawful act committed by the Commission, the applicant claims, first, that her retirement on the ground of invalidity is the consequence of an occupational disease, itself due to the administration’s refusal to provide her with assistance. However, as has been stated, the procedure for recognition of the occupational nature of the pathologies from which she claims to be suffering is still ongoing. It follows that the claim for compensation for the material damage which the applicant claims to have suffered is premature and, that being so, cannot be upheld.

253 On the other hand, so far as concerns the existence of non-material damage, it must be observed that the refusal by the Commission to take provisional measures, and the delay in opening the administrative inquiry placed the applicant in a state of uncertainty and anxiety, since she may have feared that the Commission would not consider her request for assistance and that the wrongful conduct to which she had until then been subjected on the part of the institution might continue. The applicant is therefore justified in maintaining that the implied decision rejecting the request for assistance caused her significant non-material damage which cannot be compensated for by the annulment pronounced by the Tribunal.

254 In those circumstances, fair compensation for that non-material damage will be made by directing the Commission to pay to the applicant the sum of EUR 15 000.

3. The claims seeking compensation for the damage resulting, on the one hand, from the alleged unlawfulness of the 2003 CDRs and, on the other, from the irregularity of the circumstances in which those CDRs were communicated to the applicant

a) Admissibility

Arguments of the parties

255 The Commission maintains that the claims seeking an order against the administration to compensate for the damage resulting from the unlawfulness of the 2003 CDRs are inadmissible on account of the inadmissibility of the claims seeking annulment of those CDRs.

256 The applicant contends that the plea of inadmissibility should be rejected.

Findings of the Tribunal

257 A distinction must be made between, on the one hand, the claim seeking compensation for the damage resulting from the unlawfulness of the 2003 CDRs and, on the other, that seeking compensation for the circumstances in which those CDRs were communicated to the applicant.

– Admissibility of the compensation claims based on the alleged unlawfulness of the 2003 CDRs

258 The compensation claims seeking reparation for the damage resulting from the alleged unlawfulness of the 2003 CDRs have a direct link with the claims seeking annulment of those CDRs. However, as has been stated above, on the date when the present action was brought, the claims seeking annulment of the 2003 CDRs were admissible. It follows that the compensation claims were also admissible when the applicant brought her action.

259 It must, moreover, be added that the applicant, although she no longer has any legitimate interest in having the 2003 CDRs annulled, on account of her retirement, nevertheless still has an interest in seeking a

ruling on the lawfulness of those acts in connection with a claim for compensation for the professional and non-material damage which she considers that she has suffered owing to the Commission's conduct (see, to that effect, Case T-20/89 *Moritz* v *Commission* [1990] ECR II-769, paragraph 18, not set aside on appeal as regards the examination of the admissibility, and Case T-249/04 *Combescot* v *Commission* [2007] ECR-SC I-A-0000 and II-0000, paragraph 47, against which an appeal is pending before the Court of Justice, Case C-525/07 P). The applicant's retirement therefore did not have the effect of rendering her compensation claims nugatory.

– Admissibility of the compensation claims based on the irregularity of the circumstances in which the 2003 CDRs were communicated to the applicant

260 It is important to note as a preliminary point that the administration, when it notifies an act in an irregular manner, commits a wrongful act in the performance of public duties.

261 It follows that the applicant was obliged, in order to pursue compensation for the damage which she claimed to have suffered on account of the irregularity of the notification of her 2003 CDRs, to submit a request within the meaning of Article 90(1) of the Staff Regulations, followed, in the event of a rejection of that request, by a complaint within the meaning of Article 90(2) of the Staff Regulations. However, in this case, it is established that the applicant did not submit a separate request for that purpose. Accordingly, the claims for compensation based on the alleged irregularity of the circumstances in which the 2003 CDRs were notified must be rejected as inadmissible, since the pre-litigation procedure prescribed by the Staff Regulations was not observed.

262 Only the validity of the compensation claims based on the alleged unlawfulness of the 2003 CDRs will therefore be examined.

b) Merits

Arguments of the parties

263 Among the various pleas in law raised against the 2003 CDRs, the applicant claims that the latter are vitiated by a manifest error of assessment. By awarding her the overall mark of 8/20 in both the January-October CDR and the November-December CDR, her reporting officers did not take into account the fact that she was not set any tasks between January and June 2003, or the circumstance that she was the victim of psychological harassment which caused a deterioration in her state of health and prevented her from performing her duties normally.

264 The applicant concludes by pointing out that the unlawfulness of the 2003 CDRs caused her non-material damage as well as professional damage, the latter consisting of 'a loss of opportunity in her career development and her legitimate right to promotion'.

265 The Commission disputes the applicant's claim that the 2003 CDRs are vitiated by a manifest error of assessment.

Findings of the Tribunal

– The existence of unlawfulness

266 It is clear from the fourth subparagraph of Article 8(5) of the GIP that, when considering a jobholder's efficiency, abilities shown and conduct in the service during the reporting period, the reporting officer must not 'take account of any justified absences of the jobholder'. Moreover, the review guide, which the Commission has imposed on itself as a rule of conduct, provides, in point 6.2, that 'a jobholder should not be penalised if it was not possible to achieve an objective because of external factors', for example, 'if the jobholder [was] ill [or] [went] on maternity leave', and that '[i]n such instances, the focus should be on

what the jobholder was actually able to get done and on the way in which the jobholder managed the situation'.

267 In this case, after observing, under the heading 6.1 'Efficiency' of the January-October 2003 CDR, that the applicant had not managed, up to 3 September 2003, to 'familiarise herself with [her] job', on account, in particular, of a 'lack of motivation', and considered that 'no improvement in her efficiency between 3 September 2003 and the end of October [2003] [had] been observed', the reporting officer awarded her, in respect of efficiency, a mark of 4/10, corresponding to the assessment 'poor'. Similarly, with regard to the November-December 2003 CDR, the reporting officer also awarded the applicant, for her efficiency, the mark of 4/10, pointing out that 'there had been no valid results in the course of the reporting period and that no results had been achieved' and that '[t]he general efficiency for the period therefore [had to] be assessed as being "poor"'.

268 However, it is apparent from the material in the case-file, and in particular from a document produced by the Commission itself, relating to the applicant's absences during 2003, that she was on justified sick leave between 1 September and 31 October 2003 then between 1 November and 14 November 2003, and working half-time for medical reasons between 17 November and 19 December 2003.

269 It must therefore be inferred from this that, both in the January-October 2003 CDR and in the November-December 2003 CDR, the reporting officers awarded the mark of 4/10 for efficiency without having regard to the fact that that efficiency was bound to have been affected by the justified absences of the person concerned owing to illness.

270 The plea in law alleging that the 2003 CDRs are vitiated by a manifest error of assessment must therefore be upheld.

271 In those circumstances, and without there being any need to examine the other complaints raised by the person concerned, it must be held that the 2003 CDRs were unlawfully drawn up.

– The damage

272 With regard to the material damage which is claimed to have resulted from the unlawfulness of the 2003 CDRs, it must be recalled that, even where a fault of the institution in question is established, the Community can be held liable only if the applicant has succeeded in demonstrating the reality of the damage suffered by her (see Case T-165/95 *Lucaccioni* v *Commission*, paragraph 57). However, the applicant has not demonstrated in what respect the unlawfulness of her 2003 CDRs affected her career progress before her retirement on 31 August 2005. In particular, she has not established and does not even claim that that unlawfulness had any bearing on the fact that she was not promoted in the 2004 promotion procedure.

273 With regard to the non-material damage for which compensation is also sought, the declaration by the Tribunal that the 2003 CDRs are unlawful on account of a manifest error of assessment affecting them cannot, by itself, constitute appropriate and sufficient compensation for such damage, in so far as those CDRs contain explicitly negative assessments of the applicant's abilities. As has been stated, the reporting officer stated in the January-October 2003 CDR that the applicant had not managed to 'familiarise herself with [her] job' on account, in particular, of a 'lack of motivation', whereas, in the November-December 2003 CDR, it was pointed out that 'there had been no valid results in the course of the reporting period and no results had been achieved'. Consequently, the award of a sum of EUR 2 500 will constitute appropriate compensation for the non-material damage suffered by the applicant.

4. Conclusion

274 It follows from the foregoing that the Commission is to be ordered to pay to the applicant the sum of EUR 18 000.

Costs

275 Under Article 122 of the Rules of Procedure, the provisions of Title 2, Chapter 8, on costs are to apply only to cases brought before the Tribunal from the date on which those rules enter into force, namely on 1 November 2007. The relevant provisions of the Rules of Procedure of the Court of First Instance on the subject are to continue to apply *mutatis mutandis* to cases pending before the Tribunal before that date.

276 Pursuant to Article 87(3) of the Rules of Procedure of the Court of First Instance, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Tribunal may order that the costs be shared or that each party bear its own costs.

277 Since the Commission has been unsuccessful in its main submissions, it must be ordered to bear its own costs and to pay three quarters of the applicant's costs.

On those grounds,

THE TRIBUNAL (First Chamber)

hereby:

1. Annuls the decision of the Commission of the European Communities rejecting the request for assistance submitted on 29 April 2004 by Q in so far as it refused to move her temporarily to another post;

2. Orders the Commission of the European Communities to pay to Q the sum of EUR 18 000;

3. Dismisses the remainder of the application;

4. Orders the Commission of the European Communities to bear its own costs and to pay three quarters of Q's costs;

5. Orders Q to bear one quarter of her own costs.

Kreppel Tagaras Gervasoni

Delivered in open court in Luxembourg on 9 December 2008.

W. Hakenberg S. Gervasoni

Registrar President

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c) With regard, thirdly, to the alleged fact that no tasks were assigned to the applicant between January and June 2003

d) With regard, fourthly, to the alleged fact that the Commission spread defamatory rumours concerning the applicant's professional abilities

e) With regard, fifthly, to the alleged fact that the Commission refused certain requests for annual leave and approved others belatedly

f) With regard, sixthly, to the Commission's refusal to regard the absences owing to illness as justified

C – The claims seeking annulment of the implied decision rejecting the request for assistance

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D – The claims seeking annulment of the 2003 CDRs

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The existence of unlawful conduct

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3. The claims seeking compensation for the damage resulting, on the one hand, from the alleged unlawfulness of the 2003 CDRs and, on the other, from the irregularity of the circumstances in which those CDRs were communicated to the applicant

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– Admissibility of the compensation claims based on the alleged unlawfulness of the 2003 CDRs

– Admissibility of the compensation claims based on the irregularity of the circumstances in which the 2003 CDRs were communicated to the applicant

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* Language of the case: French.