

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

8 February 2011 (*)

(Civil service — Officials — Psychological harassment by a hierarchical superior — Articles 12a and 24 of the Staff Regulations — Request for assistance — Reasonable period — Point from which time starts to run — Length of time)

In Case F-95/09,

ACTION under Articles 236 EC and 152 EA,

Carina Skareby, official of the European Commission, residing in Louvain (Belgium), represented by S. Rodrigues and C. Bernard-Glanz, lawyers,

applicant,

v

European Commission, represented by J. Currall and J. Baquero Cruz, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL
(Second Chamber),

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

Registrar: J. Tomac, Administrator,

having regard to the written procedure and further to the hearing on 15 June 2010,

gives the following

Judgment

- 1 By application received at the Registry of the Tribunal on 13 November 2009 by fax (the original being lodged on 19 November 2009), Ms Skareby seeks, in essence, annulment of the decision of the Commission of the European Communities of 4 March 2009 refusing to open an administrative inquiry into allegations of psychological harassment on the part of one of her hierarchical superiors.

Legal context

- 2 Article 12a of the Staff Regulations of Officials of the European Union ('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.

...'

3 According to Article 24 of the Staff Regulations:

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

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

4 Article 86 of the Staff Regulations provides:

'1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Where the Appointing Authority or OLAF becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred.

...'

Facts

5 The applicant has been an official of the European Union since 1 December 1996. On 18 April 2003 she was posted to the Commission Delegation in Kazakhstan as Head of Section for Kyrgyzstan. After Kyrgyzstan was assigned a regionalised delegation of the Commission, coming under the Delegation in Kazakhstan, the applicant was posted to that regionalised delegation on 19 April 2004 as Chargé d'Affaires *ad interim*. In August 2007 she returned to the Commission Directorate-General (DG) for External Relations in Brussels (Belgium).

6 By letter of 10 November 2008, the applicant submitted a request for assistance under Article 24 of the Staff Regulations, in which she claimed that she had been the victim of psychological harassment as a result of the behaviour of her two successive hierarchical superiors, who, one after the other, had been Head of the Commission Delegation in Kazakhstan ('the first hierarchical superior' and 'the second hierarchical superior', respectively). She requested in that regard that an administrative inquiry should be opened to establish the facts of the psychological harassment alleged. It is apparent from that letter that the allegations against the first hierarchical superior related to the period between April 2003 and September 2005, and those against the second hierarchical superior to that between October 2005 and August 2007, the month in which the applicant left the delegation.

7 By letter of 28 November 2008, the applicant submitted complementary information about the alleged harassment. She stated in particular that her two successive hierarchical superiors had systematically undermined and minimised her role within the Delegations in Kazakhstan and in Kyrgyzstan, which, she claimed, had put her in embarrassing and humiliating situations with her counterparts, namely, the

Governments of the countries in question, and the embassies of Member States of the European Union (EU), other international organisations and non-governmental organisations in those countries.

- 8 Following the request for assistance of 10 November 2008, the Commission informed the applicant, by letter of 4 March 2009, that the Investigation and Disciplinary Office (IDOC) had received a mandate to open an administrative inquiry into the allegations of psychological harassment made against the second hierarchical superior. Also, by the same letter, the Commission refused to open a similar inquiry into the conduct of the first hierarchical superior ('the contested decision'), on the ground that the applicant had not submitted her request for assistance within a reasonable period, given that the psychological harassment alleged against the first hierarchical superior dated back to the period between April 2003 and September 2005.
- 9 By letter of 28 May 2009, the applicant submitted a complaint against the contested decision pursuant to Article 90(2) of the Staff Regulations.
- 10 The Commission rejected the applicant's complaint by decision of 31 July 2009 on the same ground as that stated in the contested decision.
- 11 On 1 September 2009 the applicant's first hierarchical superior retired.
- 12 In the meantime, the Commission, by letter of 23 July 2009, informed the applicant that the administrative inquiry in respect of her second hierarchical superior was closed, without any disciplinary follow-up, since IDOC had found that the alleged harassment had not been established.
- 13 By letter of 26 October 2009, the applicant, pursuant to Article 90(2) of the Staff Regulations, submitted a complaint against the Commission's decision of 23 July 2009, and on 19 February 2010 that complaint also was rejected.
- 14 On 3 June 2010 the applicant brought an action against the decisions of 23 July 2009 and 19 February 2010, which was registered as Case F-42/10 and is currently pending before the Tribunal.

Forms of order sought

- 15 The applicant claims that the Tribunal should:
- declare the application admissible;
 - annul the contested decision and, so far as necessary, the Commission's decision of 31 July 2009 rejecting her complaint;
 - order the Commission to pay the costs.
- 16 The Commission contends that the Tribunal should:
- dismiss the application as inadmissible or, in any event, unfounded;
 - order the applicant to pay the costs.

Subject-matter of the dispute

- 17 In addition to annulment of the contested decision, the applicant seeks annulment of the decision of 31 July 2009 rejecting her complaint ('the decision of 31 July 2009').

18 In that regard, it should be noted, in the light of case-law (Case 293/87 *Vainker v Parliament* [1989] ECR 23, paragraph 8; Case T-330/03 *Liakoura v Council* [2004] ECR-SC I-A-191 and II-859, paragraph 13; judgment of 23 February 2010 in Case F-7/09 *Faria v OHIM*, paragraph 30) and the scope of the decision of 31 July 2009 (which in essence merely confirms the contested decision), that the claim for annulment of the decision of 31 July 2009 lacks, as such, any independent content and is in actual fact indissociable from the claim for annulment of the contested decision.

19 It must therefore be held that the claim for annulment is directed solely against the contested decision.

Admissibility

Arguments of the parties

20 The Commission submits that the application is inadmissible on the ground that the applicant has no interest in bringing the action. Even if the action were well founded, annulment of the contested decision would not give the applicant satisfaction, for three reasons. First, psychological harassment, if any, ceased in 2005; secondly, a claim seeking compensation for the applicant if the contested decision were annulled would ‘almost certainly be time-barred’; thirdly, initiation of disciplinary proceedings against the alleged perpetrator of psychological harassment would be optional for the administration, especially since he has already retired and is therefore not in a position to reoffend.

21 At the hearing the applicant contested the plea of inadmissibility raised by the Commission, claiming in particular that she retains a personal interest in seeking annulment of the contested decision since, in the event of annulment, the administration would undertake an administrative inquiry to establish whether there was psychological harassment by the first hierarchical superior. If such harassment were to be established her dignity would be restored and she would be able to challenge her career development report which was drawn up by the hierarchical superior in question.

Findings of the Tribunal

22 It is common ground that claims for annulment of an administrative measure are inadmissible in the absence of a vested and present legitimate interest in bringing proceedings, where annulment of the contested measure would not give the person concerned satisfaction.

23 In the present case, it is true that the applicant, of her own admission, is not seeking compensation for any damage resulting from the alleged harassment. Nor is she seeking initiation of disciplinary proceedings against the alleged perpetrator of the psychological harassment, the launching of which proceedings is, moreover, at the discretion of the Commission by reason of Article 86(2) of the Staff Regulations. Lastly, given that the alleged harassment must be deemed to have ceased in 2005, there is no question of the administration having to act in order to end it.

24 However, the circumstances referred to above have not rendered the present action devoid of purpose or removed the applicant’s interest in seeking annulment of the contested decision.

25 Indeed, in so serious a matter as psychological harassment it must be accepted that the supposed victim of such harassment, who brings an action against the institution’s refusal to consider the merits of a request for assistance, retains as a rule, despite considerations such as those pleaded by the Commission in the present case (see paragraphs 20 and 23 above), a legitimate interest as required by case-law as a condition for the admissibility of an application.

26 That approach is called for primarily because of the very seriousness of psychological harassment, conduct which may have extremely destructive effects on a person’s state of health. If the reputation of a retired official justifies his interest in challenging the decision suspending him, despite the fact that that disciplinary measure was necessarily rescinded on the day he retired (Case F-80/08 *Wenig v Commission*

[2009] ECR-SC I-A-1-479 and II-A-1-2609, paragraph 35), the same must be true in respect of the supposed victim of psychological harassment, irrespective of whether such harassment persists or whether the person in question makes, or is even entitled or intends to make, other claims, in particular for compensation, in respect of the psychological harassment. It should be added in this context that a finding by the administration that psychological harassment has occurred is, in itself, likely to have a beneficial effect in the therapeutic process of recovery of an individual who has been harassed.

- 27 Also, making recognition of an interest in bringing an action dependent on considerations such as those set out in paragraphs 20 and 23 above (or on other similar considerations) would seriously undermine legal certainty, since often an applicant's intentions are not expressed sufficiently clearly and unequivocally for it to be possible to determine whether he has an interest in bringing an action.
- 28 Furthermore, refusal by an institution to conduct even a preliminary examination of the merits of allegations of psychological harassment, and of evidence supporting such allegations, an examination that is needed in order to decide whether it is necessary to open an inquiry or to take some other appropriate measure, would leave doubt as to the genuineness of the facts alleged by the supposed victim of psychological harassment, although those facts may possibly have had a decisive influence on his personal or professional life. Thus, an official retains an interest in seeking annulment of such a refusal, in order, in the event of annulment, to have his situation — that is to say whether psychological harassment has occurred or not — examined by the institution.
- 29 The above considerations still apply even where, as the Commission points out, a claim for compensation, submitted following the administrative inquiry which might be opened if the contested decision were annulled, would be time-barred.
- 30 In the context of the present case it should also be observed that although, as the Commission states, the opening of disciplinary proceedings against the alleged perpetrator of the psychological harassment falls within its discretion, according to Article 86(1) of the Staff Regulations, by contrast, the fact that the perpetrator in question is now retired does not preclude disciplinary action being taken against him.
- 31 It follows from all the above considerations that the plea of inadmissibility raised by the Commission cannot be upheld.

The claim for annulment of the contested decision

- 32 In support of her claim for annulment of the contested decision, the applicant puts forward three pleas: (i) breach of the duty to state reasons; (ii) manifest errors of assessment; and (iii) breach by the Commission of the duty to provide assistance and the duty to have regard for the welfare of officials.

Arguments of the parties

First plea: breach of the duty to state reasons

- 33 The first plea, alleging breach of the duty to state reasons for the contested decision, comprises three parts, the first two of which in actual fact relate to the issue of whether the reasons for the contested decision are valid. First, the applicant disputes, in essence, the transposition to the issue of psychological harassment of the case-law concerning the five-year time-limit applicable in actions for EU non-contractual liability (Case F-125/05 *Tsarnavas v Commission* [2007] ECR-SC I-A-1-43 and II-A-1-231, paragraph 71; order in Case F-87/07 *Marcuccio v Commission* [2008] ECR-SC I-A-1-351 and II-A-1-1915, paragraph 29) and of the case-law concerning the reasonable period for instituting disciplinary proceedings, a period which is not specified either by the legislature or by the courts (see Case T-307/01 *François v Commission* [2004] ECR II-1669). Secondly, even if the case-law applicable in actions for EU non-contractual liability could be transposed to the issue of psychological harassment, the applicant submits that her request was submitted within a reasonable period and in accordance with the case-law in question, given the

circumstances specific to this case and, in particular, both her fears for her career prospects and the time she needed to recover after the alleged harassment ceased. Those circumstances are such that they could justify a period of even longer than five years. Thirdly, the applicant claims that in the decision of 31 July 2009 the Commission did not respond to the plea alleging breach of Article 24 of the Staff Regulations and of the duty to have regard for the welfare of officials and therefore failed to state adequate reasons for its refusal to open an inquiry into the conduct of the first hierarchical superior.

- 34 The Commission contends, first, that the case-law cited by the applicant both with regard to the five-year time-limit applicable in actions for EU non-contractual liability and with regard to the reasonable period for initiating disciplinary proceedings is not being transposed mechanically to the issue of psychological harassment, but used by analogy. Also, the applicant's fears for her career are groundless since, in particular, under Article 12a(2) of the Staff Regulations, an official who has been the victim of psychological harassment must not suffer any prejudicial effects on the part of the institution. Lastly, the Commission states that it did not, in the decision of 31 July 2009, respond to the plea alleging breach of Article 24 of the Staff Regulations and of the duty to have regard for the welfare of officials because the request for assistance was rejected solely on the ground that the obligation to act within a reasonable period had not been complied with and not for reasons relating to whether psychological harassment had occurred.

Second plea: manifest errors of assessment

- 35 The second plea alleges the existence of manifest errors of assessment. First, even if the five-year time-limit applicable in actions for EU non-contractual liability were transposed to the issue of psychological harassment, the psychological harassment alleged from March 2004 onwards was reported within that time-limit, since it was reported at the time the applicant submitted her request for assistance. Secondly, it does not follow from Articles 12a and 24 of the Staff Regulations that the need to report swiftly facts allegedly constituting psychological harassment is, like the requirement to comply with a time-limit, a condition for admissibility of a request for assistance; consequently, in so far as the Commission Decision of 26 April 2006 on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment were to be interpreted as meaning that the need to stop harassment 'as quickly as possible' constitutes an obligation to comply with a time-limit, regardless of the circumstances of the case, that decision, relied on by the Commission in the decision of 31 July 2009, is unlawful. Thirdly, since the request for assistance relates simply to the opening of an administrative inquiry and does not relate to the merits of the case, the principle of legal certainty is not affected at this stage.

- 36 The Commission points out first of all that the reasonable period for submitting a request for assistance is not specified either in Article 24 of the Staff Regulations or in case-law. The five-year time-limit for bringing a claim for damages would be justified in a case of psychological harassment only in exceptional circumstances, which do not exist in the present case. Moreover, a claim for compensation is different from a complaint of psychological harassment, in so far as the former is intended to penalise whilst the latter is preventive. The Commission also states that, unlike an action for damages, which affects only the EU budget, a 'complaint' of psychological harassment may affect the position of a third party, which justifies a shorter time-limit than the five years in respect of claims for damages. A time-limit of five years would therefore seem unduly long in this case, particularly in the light of the principle of legal certainty. In that context, a reasonable period in this case would rather be 'two or three years', as under Spanish and French law. Also, the abovementioned Commission Decision of 26 April 2006 does not infringe the Staff Regulations, but merely alludes to the requirement for a victim of psychological harassment to act within a reasonable period. Lastly, a tardy request for assistance would undermine legal certainty in so far as the inquiry sought would be attempting to establish facts relating to the distant past.

Third plea: breach of the duty to provide assistance and of the duty to have regard for the welfare of officials

37 The third plea alleges breach, first, of the duty to provide assistance imposed on institutions under Article 24 of the Staff Regulations and, second, of the duty to have regard for the welfare of officials. The applicant considers that, since she has provided ‘prima facie evidence’ of the genuineness of the psychological harassment she alleges, case-law requires the administration to open an inquiry under Article 24 of the Staff Regulations (Case T-154/05 *Lo Giudice v Commission* [2007] ECR-SC I-A-2-203 and II-A-2-1309, paragraph 136).

38 In that regard, the Commission responds that it was not obliged to assess the evidence provided by the applicant, since she did not comply with the obligation to act within a reasonable period. The third plea thus falls outside the scope of the present case.

Findings of the Tribunal

39 It is appropriate to consider first the second plea which, despite the wording given in the application, must in fact be interpreted as alleging an error of law and not manifest errors of assessment. The applicant does not claim that the administration erred in its assessment of the facts but that it misapplied Articles 12a and 24 of the Staff Regulations, in particular concerning the matter of the requirement of observing a time-limit for submitting a request for assistance.

40 Articles 12a and 24 of the Staff Regulations, as the parties acknowledge, do not expressly lay down a time-limit for submitting a request for assistance in respect of psychological harassment. It is necessary, therefore, to ascertain whether there is an obligation to comply with any such time-limit.

The obligation to comply with a time-limit

41 As is clear from established case-law, there is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or protection of legitimate expectation place a bar on EU institutions and natural or legal persons acting without any time-limits, thereby threatening, inter alia, to undermine the stability of legal positions already acquired (see, to that effect, Case T-281/01 *Huygens v Commission* [2004] ECR-SC I-A-203 and II-903, paragraphs 42 and 46 to 47, and Case T-144/02 *Eagle and Others v Commission* [2004] ECR II-3381, paragraph 57).

42 Moreover, the right of litigants to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, does not preclude the court hearing a case from drawing inferences, even in the absence of an express limitation period, from the fact that an action was brought after a clearly excessive lapse of time (see, to that effect, *Eagle and Others v Commission*, paragraph 64).

43 In so far as a request for assistance in respect of alleged psychological harassment seeks a declaration that there has been unlawful and improper conduct on the part of an official or other servant and it cannot be excluded that such conduct, where it occurred in the exercise of the duties of the alleged perpetrator, may, where appropriate, in the light of the circumstances of the case, render the institution concerned liable, a request for assistance invoking such conduct has a legal connection with any claim for compensation submitted to the administration by an official on the basis of Article 90(1) of the Staff Regulations. For compensation claims, case-law requires that the complainant act within a ‘reasonable’ time, (see *Huygens v Commission*, paragraph 48; *Eagle and Others v Commission*, paragraph 66; judgment of 11 May 2010 in Case F-30/08 *Nanopoulos v Commission*, paragraph 117, the subject of an appeal pending before the General Court in Case T-308/10 P; order of 9 July 2010 in Case F-91/09 *Marcuccio v Commission*, paragraph 32, the subject of an appeal before the General Court in Case T-450/10 P).

44 In the light of the above considerations it must be acknowledged that there is a period within which an official must submit a request for assistance in respect of psychological harassment, a time-limit which follows from the general principles of EU law, in particular the principle of legal certainty.

45 As a result, in the present case, the applicant's request for the Commission to open an administrative inquiry in order to establish whether psychological harassment had occurred on the part of the first hierarchical superior must satisfy the requirement of compliance with a time-limit.

The point from which time starts to run

46 It should be noted first of all that, as regards claims for compensation in staff cases, the 'reasonable' time, as required by settled case-law, starts to run, according to that same case-law, from the moment when the official or other servant concerned becomes aware of the act or fact of which he is complaining (see, to that effect, *Eagle v Commission*, paragraph 60; *Tsarnavas v Commission*, paragraph 69; and *Nanopoulos v Commission*, paragraph 116).

47 However, the fact remains that, according to Article 12a(3) of the Staff Regulations, psychological harassment is conduct that takes place over a period and is repetitive or systematic. Psychological harassment therefore constitutes an offence which is continuous by definition, necessarily takes place over time and, in order for it to be regarded as having taken place, assumes the existence of conduct which must be repeated or systematic. Moreover, the symptoms may not appear until a certain time after the occurrence of the initial acts of psychological harassment or the full awareness by the victim of the significance of those acts, with the victim moreover often needing time to realise what is happening to him and to escape from the harasser's control.

48 Accordingly, the criterion of awareness of the harmful act or fact is not appropriate as an indicator of the point from which time starts to run for submission of a request for assistance in respect of psychological harassment.

49 It appears instead more appropriate, in view of the specific nature of psychological harassment and the requirement of legal certainty, to take exclusively objective criteria as a basis, adopting as the point from which time starts to run for submission of a request for assistance in respect of psychological harassment the last act of such harassment on the part of the alleged perpetrator or, in any event, the time from which the alleged perpetrator is no longer in a position to continue to harass the victim, irrespective both of the awareness or realisation by the victim of the various acts of psychological harassment, and of the act whereby the improper conduct of the alleged perpetrator becomes 'systematic' 'over a period', a situation which is required in order for it to be found that such harassment has taken place.

50 Determining the point from which time starts to run in accordance with the rules set out in the preceding paragraph, on the one hand takes full account of the specific nature of psychological harassment, with regard in particular to the individual situation of the victim (see paragraph 47 above), and, on the other hand, by not making the point when a request for assistance becomes time-barred depend on the individual perception of the situation by the victim of the psychological harassment, meets the requirement of legal certainty necessary for the application of limitation periods (see, with regard to the point at which the limitation period starts to run for actions in EU non-contractual liability, Case C-51/05 P *Commission v Cantina sociale di Dolianova and Others* [2008] ECR I-5341, paragraph 60).

51 It is clear from the documents in the present case, first, that the last act of psychological harassment of which the applicant accuses her first hierarchical superior, acting in that capacity, took place in March 2005, second, that that superior left the delegation in September 2005 and, third, that the applicant does not mention any act of psychological harassment on the part of her first hierarchical superior after September 2005. It follows that the reasonable period within which the applicant may request assistance from the Commission, under Article 24 of the Staff Regulations, starts to run from March 2005 at the earliest and September 2005 at the latest.

The length of the period

52 Although it is common ground that, according to the case-law on claims for damages by officials, the reasonableness of the period to be complied with is to be appraised in the light of the circumstances

specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties (*Huygens v Commission*, paragraph 48; *Eagle and Others v Commission*, paragraph 66 and case-law cited; *Nanopoulos v Commission*, paragraph 117), the fact remains that, according to the same case-law, a point of reference may be derived from the limitation period of five years laid down in Article 46 of the Statute of the Court of Justice for actions in EU non-contractual liability, although that article is not applicable as such in disputes between the EU and its servants (Case 9/75 *Meyer-Burckhardt v Commission* [1975] ECR 1171, paragraphs 7, 10 and 11). That provision allows the imposition on any person seeking reparation for damage from the EU of an obligation to act within a period which will guarantee legal certainty and is clearly defined in the interests of all concerned; at one and the same time, it allows the person concerned sufficient time, from the occurrence of the actionable event, to make known his claims to the EU institution and allows the EU to safeguard its finances from claims made by persons who have shown too little diligence in pursuing them (*Eagle and Others v Commission*, paragraph 68).

- 53 In the light of the legal connection between a claim for compensation by an official and a request for assistance on grounds of psychological harassment (see paragraph 43 above), and in the absence of any relevant reason for disregarding the point of reference derived in the case-law cited in the preceding paragraph, it must be acknowledged, first, that the period within which a request for assistance should be submitted must be reasonable; second, that a period of five years is, as a rule, to be regarded as a reasonable period within which to make a valid report of psychological harassment to the administration and request its assistance, by seeking in particular the opening of an administrative inquiry in that regard; and third, that the Commission's argument that the requirement of legal certainty would be infringed if the time-limit were five years must therefore be dismissed. That length of time allows both the administration to comply fully with its duty to have regard for the welfare of officials and with its obligations under Article 24 of the Staff Regulations, where appropriate taking measures on its own initiative, and the person concerned to have a sufficiently long period within which to submit his claims to the institution; it also enables account to be taken of the particular features, mentioned in paragraph 47 above, associated with the concept of psychological harassment, namely the fact that the symptoms may not appear until some time after the first acts of psychological harassment and that the victim often needs time to realise what is happening to him and to escape from the harasser's control.
- 54 However, and by analogy with what is allowed in actions for damages by officials, the five-year period for submitting a request for assistance in respect of psychological harassment cannot be regarded as a hard and fast rule. In particular, although a request for assistance in respect of psychological harassment submitted within the five-year period is as a rule admissible, that may not be so in special circumstances (see, with regard to actions for damages by officials, order in Case F-87/07 *Marcuccio v Commission*, paragraph 30), to be appraised on the basis of the criteria derived in the case-law cited in paragraph 52 above, namely the importance of the case for the person concerned, the complexity of the case and the conduct of the applicant.
- 55 In the present case, there is nothing to indicate the existence of special circumstances of that kind and thus to regard as unreasonable the period of approximately three and a half years which elapsed between the date on which the alleged harassment ceased (either March 2005, or September 2005 at the latest) and the date on which the request for assistance was submitted, that period being much less than five years. Moreover, even if the time in question started to run from the occurrence of the act whereby the improper conduct of the alleged perpetrator became 'systematic' 'over a period', characteristics which are required in order for such harassment to be found to have taken place, the period would still not exceed five years, because, although the applicant submitted her request for assistance on 10 November 2008, the material in the case-file does not show that the conduct of which the first hierarchical superior is accused had, more than five years before that date, 'take[n] place over a period, [and been] repetitive or systematic', as required by Article 12a(3) of the Staff Regulations in order for it to be found that 'psychological harassment' has occurred.

- 56 On the contrary, it must be held, first, that the after-effects of the alleged harassment and hence what is at stake in the case appear to be major for the applicant, who has instituted proceedings before the Tribunal by bringing the present action and also the action registered as Case F-42/10. The merits of the case also appear to be fairly complex, in that they involve two successive hierarchical superiors of the applicant in respect of psychological harassment which allegedly occurred over several years, the conduct attributed to the second hierarchical superior following on very closely from that attributed to the first hierarchical superior. That conduct, although hypothetical in the absence of verification by the administration, none the less justifies the fact that the applicant did not submit her request for assistance immediately after the departure of the first hierarchical superior.
- 57 Moreover, the Commission's argument that two Member States apply a limitation period of three years under criminal law for offences of psychological harassment cannot be upheld. It follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the EU, having regard to the context of the provision and the objective pursued by the legislation in question (see Case T-342/04 *Adam v Commission* [2006] ECR-SC I-A-2-23 and II-A-2-107, paragraph 32 and case-law cited). Although, according to that case-law, even in the absence of an express reference, the application of EU law may none the less, where appropriate, involve making a reference to the laws of the Member States, that is only where the courts cannot identify in EU law or in the general principles of EU law the elements which would allow them to define the content and scope of EU law by an autonomous interpretation.
- 58 In the present case, EU law provides, in particular in Article 46 of the Statute of the Court of Justice of the European Union, sufficient guidance to allow the length of the reasonable time to be specified in an autonomous manner, so that all reference to national law should be excluded when ruling on the reasonableness of the time taken. Moreover, an autonomous interpretation of the concept of 'reasonable time', specifying the length of time an official has in order to report psychological harassment, is best suited to ensuring uniform application of that concept and equal treatment of officials who are victims of psychological harassment.
- 59 In view of all the foregoing, the contested decision must be annulled and the second plea upheld, without there being any need to adjudicate on the other pleas raised by the applicant.

Costs

- 60 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title II of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Pursuant to Article 87(2), if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.
- 61 It follows from the grounds set out above that the Commission is the unsuccessful party. Moreover, in the form of order sought, the applicant expressly applied for the Commission to pay the costs. Since the circumstances of the present case do not justify application of the provisions of Article 87(2) of the Rules of Procedure, the Commission must therefore be ordered to pay the costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL
(Second Chamber)

hereby:

- 1. Annuls the decision of the European Commission of 4 March 2009 refusing to open an administrative enquiry into allegations of psychological harassment by one of Ms Skareby's former hierarchical superiors;**
- 2. Orders the European Commission to pay all the costs.**

Tagaras

Kreppel

Van Raepenbusch

Delivered in open court in Luxembourg on 8 February 2011.

W. Hakenberg

H. Tagaras

Registrar

President

* Language of the case: English.