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

10 July 2008 (*)

(Staff cases – Members of the temporary staff – Recruitment – Probationary period – Extension of probationary period – Dismissal at the end of the probationary period – Obligation to state the reasons on which the decision is based – Rights of the defence – Manifest error of assessment – Psychological harassment)

In Case F-61/06,

ACTION under Articles 236 EC and 152 EA,

Cathy Sapara, former probationer member of the temporary staff at Eurojust, residing in The Hague (Netherlands), represented by G. Vandersanden and C. Ronzi, lawyers,

applicant,

v

Eurojust, represented by L. Defalque, lawyer,

defendant,

THE TRIBUNAL (Third Chamber),

composed of P. Mahoney (President), I. Boruta (Rapporteur) and H. Tagaras, Judges,

Registrar: C. Schilhan, Administrator,

having regard to the written procedure and further to the hearing on 21 November 2007,

gives the following

Judgment

1 By application received by fax at the Registry of the Tribunal on 12 May 2006 (the original being lodged on 17 May 2006), Ms Sapara claims that the Tribunal should annul Eurojust's decision of 6 July 2005 to dismiss her at the end of her probationary period, order that she be reinstated within Eurojust with effect from 6 July 2005 and order Eurojust to pay her by way of material damage the salary she should have received between 6 July 2005 and 15 October 2009 and, by way of non-material damage, the sum, assessed on a provisional basis *ex aequo et bono*, of EUR 200 000.

Legal context

2 Article 9 of the Staff Regulations of officials of the European Communities ('the Staff Regulations') provides as follows:

‘1. There shall be set up:

(a) within each institution:

…

– a Reports Committee, if required;

…

5. The opinion of the Reports Committee shall be sought:

(a) on action following completion of probationary service;

…’

3 Article 12a of the Staff Regulations provides as follows:

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

…

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 The first two paragraphs of Article 26 of the Staff Regulations state as follows:

‘The personal file of an official shall contain:

(a) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;

(b) any comments by the official on such documents.

Documents shall be registered, numbered and filed in serial order; the documents referred to in subparagraph (a) may not be used or cited by the institution against an official unless they were communicated to him before they were filed.’

5 The first sentence of the first paragraph of Article 11 of the Conditions of employment of other servants of the European Communities (‘the Conditions of employment’) provides that ‘[t]he provisions of Articles 11 to 26 of the Staff Regulations, concerning the rights and obligations of officials, shall apply by analogy’.

6 The second paragraph of Article 12 of the Conditions of employment states as follows:

‘A member of the temporary staff may be engaged only on condition that:

(a) he is a national of one of the Member States of the Communities, unless an exception is authorised by the authority referred to in the first paragraph of Article 6, and enjoys his full rights as a citizen;

(b) he has fulfilled any obligations imposed on him by the laws concerning military service;

(c) he produces the appropriate character references as to his suitability for the performance of his duties;

(d) he is physically fit to perform his duties; and

(e) he produces evidence of a thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of the Communities to the extent necessary for the performance of his duties.'

7 Article 14 of the Conditions of employment provides as follows:

'A member of the temporary staff may be required to serve a probationary period not exceeding six months.

Where during his probationary period a member of the temporary staff is prevented, by sickness or accident, from performing his duties for one month or more, the authority authorised to conclude the contract of engagement may extend his probationary period by the corresponding length of time.

Not less than one month before the expiry of the probationary period, a report shall be made on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his conduct and efficiency in the service. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing. A member of the temporary staff whose work has not proved adequate to justify retention in his post shall be dismissed. However, the authority referred to in the first paragraph of Article 6 may, in exceptional circumstances, extend the probationary period for a maximum of six months, and possibly assign the member of the temporary staff to another department.

A report on the probationary member of temporary staff may be made at any time during the probationary period if his work is proving obviously inadequate …'

8 According to Article 48 of the Conditions of employment:

'Employment, whether for a fixed or for an indefinite period, may be terminated by the institution without notice:

(a) during or at the end of the probationary period in accordance with Article 14;

…'

9 Article 20 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime ('the decision setting up Eurojust') provides as follows:

'1. … every individual shall be entitled to ask Eurojust to correct, block or delete data concerning him if they are incorrect or incomplete or if their input or storage contravenes this Decision.

…

4. If it emerges that personal data processed by Eurojust are incorrect or incomplete or that their input or storage contravenes the provisions of this Decision, Eurojust shall block, correct or delete such data.

…'

10 Article 50 of the Conditions of employment provides as follows:

'1. The employment of a member of the temporary staff shall be terminated by the institution without notice if the authority referred to in the first paragraph of Article 6 finds:

(a) that at the time of his engagement he deliberately furnished false information as to either his professional ability or the requirements of Article 12(2), and

(b) that the false information furnished was a determining factor in his being engaged.

2. In such cases, the authority referred to in the first paragraph of Article 6 shall, after hearing the servant concerned, and after the disciplinary procedure provided for in Annex IX to the Staff Regulations, which shall apply by analogy, has been followed, declare that his employment is terminated.

Before his employment is terminated, a member of temporary staff may be suspended in accordance with Articles 23 and 24 of Annex IX to the Staff Regulations, which shall apply by analogy.

The provisions of Article 49(2) shall apply.'

11 Article 50a of the Conditions of employment provides as follows:

'Without prejudice to Articles 49 and 50, any intentional or negligent failure by a member of the temporary staff or of a former member of the temporary staff to comply with his obligations under these conditions of employment shall render him liable to disciplinary action in accordance with Title VI of the Staff Regulations and where applicable Annex IX to the Staff Regulations, the provisions of which shall apply by analogy.'

12 According to the first sentence of Article 9(1) of the Rules of Procedure on the processing and protection of personal data at Eurojust, adopted by the Eurojust College on 21 October 2004 and approved by the Council on 24 February 2005 ('the Rules of Procedure'):

'The data subject shall have a right to access, correction, blocking, and, as the case may be, deletion.'

13 Article 10 of the Rules of Procedure provides as follows:

'In accordance with Article 25 of the Eurojust Decision, all persons called upon to work within and with Eurojust are bound by strict confidentiality obligations. All necessary measures shall be taken by Eurojust to ensure that these obligations are complied with and that any breaches of such obligations are promptly reported to the Data Protection Officer and the head of the Security Department, who shall ensure that appropriate steps are taken.'

Background to the dispute

14 The applicant began working for Eurojust as a member of the temporary staff on 20 November 2003. She was responsible, in particular, within the human resources unit and under the supervision of the head of that unit ('the head of unit'), for preparing and organising recruitment procedures.

15 In 2004, Eurojust published vacancy notice 04/EJ/32 for a post of assistant responsible for recruitment ('Human Resources Assistant').

16 The applicant applied for the post referred to in vacancy notice 04/EJ/32. In her application, she stated, inter alia, that she had been employed from 1 June 2001 until 30 June 2002 by a Netherlands company, company A, and had held the position of person responsible for human resources ('Human Resources Account Manager'). She added that her contract terminated following her refusal to be relocated to the United Kingdom to a position which had no connection with human resources.

17 By letter of 14 September 2004, the head of unit informed the applicant that her application had been successful. That letter contained the following information:

'I am also enclosing a list of documents required in order to complete your Personnel File. Please note that we require certified copies of all these documents including certificates covering all periods of employment mentioned on your curriculum vita stating starting and ending dates. These documents will be used to determine your final grading and entitlements.'

18 On 16 October 2004, a contract was signed engaging the applicant as a temporary employee in Grade B*3, pursuant to Article 2(a) of the Conditions of employment, for a period of five years with effect from that date.

19 The applicant's contract stipulated that she was required under the first paragraph of Article 14 of the Conditions of employment to serve a six-month probationary period, namely from 16 October 2004 to 15 April 2005.

20 Since the applicant's personal file was incomplete, an addendum to the contract was signed on 16 October 2004 stipulating that, in order to certify that the applicant fulfilled the requirements set out in vacancy notice 04/EJ/32, additional documents were to be provided and that failure to provide such information within three months would result in her dismissal.

21 On 12 November 2004, the applicant sent to the head of unit an e-mail, which stated as follows:

'I am writing this confidential e-mail to you just to let you know that I feel very uncomfortable with jokes about my colour. I only mention this as this is the second time it has happened. I feel it is inappropriate and frankly I am just not used to it. I feel belittled when you make your comments. I request between me and you that this does not happen again. I have the utmost respect for you and your integrity so I know that you will understand how I feel …'

22 In an undated affidavit addressed to the Administrative Director of Eurojust and annexed to the complaint, the applicant stated that:

'The attitude of [the head of unit] to me was I felt at times disrespectful. In the meetings with the HR unit he would often make jokes about my colour saying that I was working so hard I was becoming black (I am a black woman) …'

23 By e-mails of 15 December 2004, the assistant in the Eurojust human resources unit asked company A and company B, another former employer of the applicant's, for information on the type of contract under which the applicant had been employed by those companies, the starting and ending dates and the number of hours worked per week and per month. She also asked company A to provide her with 'any other information that could be of assistance'.

24 By e-mail of 15 December 2004, company B indicated that it was unable to provide any information relating to the work carried out by the applicant since no contract had been drawn up and the staff at the company could not recall having worked with the applicant.

25 By e-mail of 20 December 2004, company A replied that the applicant had been engaged on 5 June 2001 and that, while her contract terminated officially on 10 April 2002, she had not worked during the three-month period prior to that date. As regards the skills required for the position held by the applicant, company A added that her duties had entailed managing the company's client files and, to that end, she had been responsible for keeping the records and information relating to those files in order.

26 On 26 January 2005, during the probationary period, the head of unit prepared an interim probationary period report ('the interim report'), in which he referred to the applicant's lack of knowledge of the Staff Regulations and the general principles of recruitment at Community level as well as her unwillingness to adapt to team-work. It was also stated that it was necessary for the applicant to work more independently and to improve her handling of the recruitment files. In concluding the report, the head of unit recommended '[to] inform [the applicant of the content] of this report and extend her probationary period for an additional three months'.

27 The interim report was made available to the applicant, who submitted her comments in writing on 1 February 2005.

28 On 9 February 2005, Eurojust published notice of competition 05/EJ/CA/1 for the purpose of engaging a member of the contract staff responsible for recruitment.

29 On 10 March 2005, a report was prepared pursuant to the first sentence of the third paragraph of Article 14 of the Conditions of employment on the ability of the applicant to perform the duties pertaining to her post and also on her conduct and efficiency in the service ('the first end-of-probation report'). In that report, the head of unit stated that, notwithstanding improvements that had been noted since the interim report, in particular with regard to the applicant's relations with her colleagues, there was still room for improvement in the applicant's interpretation of the rules, her knowledge of the Staff Regulations and her technical skills. The lack of care with which the applicant managed the recruitment files was also commented upon. The head of unit therefore confirmed his initial recommendation that the probationary period be extended.

30 The first end-of-probation report was made available to the applicant, who submitted comments in writing on 10 March 2005.

31 On 14 March 2005, the authority authorised to conclude contracts ('AACC') sent to the applicant a letter worded as follows:

'As a result of the [first end-of-probation report] and pursuant to [the third paragraph of] Article 14 of the Conditions of employment, I inform you that I have decided to extend your probationary period for a period of three months. Your probationary period will therefore end on 15 July 2005.'

32 A further probationary report was prepared by the head of unit on 8 June 2005 ('the second end-of-probation report'). The conclusion of that report contained, inter alia, the following assessment:

'The probationer showed … some difficulties … in adapting to the HR Unit team. This has been proved through mixed feelings in the other members of the team and personal conflicts with especially one of them, which resulted in long conversations led by the head of the unit to solve the problem. Furthermore, the probationer did not manage to perform up to the standards required for a "B*" category staff member.'

33 The second end-of-probation report was made available to the applicant, who submitted comments in writing on 13 June 2005.

34 On 14 June 2005, the AACC sought from the head of unit a recommendation as to the action to be taken concerning the applicant's contract.

35 In a memorandum of the same date to the AACC, the head of unit recommended that the applicant be dismissed at the end of her probationary period.

36 It is apparent from an e-mail sent, inter alia, to the Administrative Director of Eurojust on 6 December 2006 by the head of the Eurojust College that the latter had been informed on 14 June 2005 that the Administrative Director was contemplating dismissing the applicant and had asked that director to defer notification of the dismissal decision in order to be able to deal with the situation.

37 On 16 June 2005, the assistant of the Eurojust human resources unit sent an e-mail to Mrs J at company A seeking information on the circumstances in which the applicant's employment with that company had terminated. Mrs J replied to the assistant of the human resources unit on the same day.

38 By letter of 6 July 2005, the Administrative Director of Eurojust informed the applicant of his decision to dismiss her.

39 The letter of 6 July 2005 was worded as follows:

'I very much regret to inform you that following the negative outcome of the [second end-of-probation report], I have decided in my capacity as [AACC] to terminate your contract as a temporary agent … at the

end of your probationary period … You will find enclosed the formal [dismissal] decision for your information.

Having regard to Article 48 and to Article 14 of the [Conditions of employment], the [AACC] … may decide to terminate a contract without notice, whether employment is for a fixed or an indefinite period, during or at the end of the probationary period.

Because of reasons inherent to the service, I have decided that your presence in the Eurojust building is no longer required. Therefore, from the moment you receive the present letter, you will have one day to contact the Security Service of Eurojust in order to collect your property from the office and to settle the administrative formalities. Please note that you will at all times be accompanied by Eurojust security staff during your presence on Eurojust premises.

…'

40 Enclosed with the letter of 6 July 2005 was a document entitled '[d]ecision to terminate the contract of [the applicant] as a follow up to the negative outcome of her [second end-of-probation report] of 6 July 2005' ('the dismissal decision'), which was worded as follows:

'The [AACC]

…

Having regard to the recommendation made to me by the Head of … Unit in the framework of the [second end-of-probation report],

Having regard to the previous reports produced on the performance of [the applicant] as Recruitment Officer of Eurojust,

…

has decided as follows:

Article 1: to terminate [the applicant's] contract at the end of her probationary period.

Article 2: [the applicant] shall be informed about this decision.

Article 3: this decision shall enter into force on the date of its signature.

Done at The Hague, on 6 July 2005

Signed: … Administrative Director'.

41 By an unsigned and undated communication disseminated on 8 July 2005, the Staff Committee of Eurojust indicated that it disapproved of the manner in which the dismissal decision had been implemented.

42 On 5 October 2005, the applicant lodged a complaint against the dismissal decision.

43 On 27 November 2005, following her request for access to personal documents pertaining to her, the applicant received a copy of a set of correspondence and e-mails. These included the e-mails concerning her exchanged on 16 June 2005 between Eurojust and company A.

44 The complaint lodged by the applicant on 5 October 2005 was rejected by express decision of the AACC on 3 February 2006, which was received by the applicant on 6 April 2006.

45 By letter of 6 December 2005, the applicant asked the Administrative Director of Eurojust to delete the e-mails exchanged on 16 June 2005, which, according to her, had been sent in breach of the principle of confidentiality. She also requested that the case be put before the Joint Supervisory Body of Eurojust, which was responsible, pursuant to Article 23(1) of the decision setting up Eurojust, for ensuring that the processing of personal data was carried out in accordance with the principle of confidentiality.

46 On 2 March 2006, taking the view that the e-mails exchanged on 16 June 2005 between Eurojust and company A infringed Article 20 of the decision setting up Eurojust and Article 9 of the Rules of Procedure, the Administrative Director of Eurojust decided that those e-mails were to be deleted from all of the agency's files, apart from the file on the applicant's complaint against the dismissal decision.

Forms of order sought by the parties

47 The applicant claims that the Tribunal should:

– annul the dismissal decision;

– order Eurojust to reinstate the applicant with effect from 6 July 2005;

– order Eurojust to pay the applicant, by way of compensation for material damage, the salaries she should have received between 6 July 2005 and 15 October 2009 and, by way of compensation for non-material damage, the sum of EUR 200 000, assessed on a provisional basis *ex aequo et bono*;

– order Eurojust to pay the costs.

48 Eurojust contends that the Tribunal should:

– reject the first plea in law as inadmissible;

– dismiss the action as unfounded;

– make an appropriate order as to costs.

Law

I – The claims for annulment of the dismissal decision

49 The applicant raises five pleas in law, alleging:

– first, infringement of Article 14 of the Conditions of employment and Article 9 of the Staff Regulations;

– secondly, infringement of the general principle of law requiring reasons to be given for acts adversely affecting an official and manifest errors of assessment of the facts resulting in errors of law;

– thirdly, breach of the rights of the defence;

– fourthly, infringement of the general principle of sound administration;

– fifthly, abuse of powers.

A – The first plea, alleging infringement of Article 14 of the Conditions of employment and Article 9 of the Staff Regulations

1. Arguments of the parties

50 In support of her contention that the dismissal decision was taken in breach of Article 14 of the Conditions of employment and Article 9 of the Staff Regulations, the applicant puts forward five separate grounds of challenge.

51 First, from the time of the interim report, the head of unit recommended that the applicant's probationary period be extended, whereas he is forbidden under the third paragraph of Article 14 of the Conditions of employment from making such a recommendation before the first end-of-probation report is drawn up. Secondly, the decision to extend the probationary period should have been taken by the AACC, not the head of unit. Thirdly, the head of unit produced two end-of-probation reports, whereas, according to the third paragraph of Article 14 of the Conditions of employment, only one report should have been produced. Fourthly, pursuant to Article 9 of the Staff Regulations, the Staff Committee should have been consulted on the proposal to dismiss the applicant. Fifthly, the AACC should also have consulted the members of the Eurojust College before taking the dismissal decision.

52 Eurojust contends that the plea should be rejected.

2. Findings of the Tribunal

53 It is necessary to examine each of the grounds of challenge put forward by the applicant in support of the first plea.

54 First of all, it may be inferred from the third paragraph of Article 14 of the Conditions of employment that if the AACC decides to extend the probationary period which a probationer member of the temporary staff is required to serve, the AACC must base its decision on the report produced at the end of the probationary period.

55 In the present case, as is apparent from the letter of 14 March 2005 sent to the applicant by the AACC, the decision to extend the applicant's probationary period was taken on the basis of the first end-of-probation report.

56 The head of unit did not, therefore, act inconsistently with the third paragraph of Article 14 of the Conditions of employment by recommending in that first end-of-probation report that the applicant's probationary period be extended.

57 Such a finding cannot be affected by the fact that, in the interim report, drawn up on 26 January 2005, the head of unit had already recommended an extension of the probationary period, since such a recommendation, which was premature, could not have had any effect on the applicant's position.

58 In those circumstances, the first ground of challenge must be rejected.

59 In the second place, it is apparent from the documents before the Tribunal and, in particular, the letter of 14 March 2005 to the applicant from the AACC, that the decision to extend the probationary period was taken by the AACC and not, as the applicant incorrectly claims, by the head of unit. The ground of challenge alleging that that decision was taken by a person who did not have competence to do so cannot therefore be accepted.

60 In the third place, it is not disputed that the third paragraph of Article 14 of the Conditions of employment does not expressly provide that, in the event of a probationary period being extended, a further end-of-probation report should be drawn up at the end of that extended period. However, that provision cannot be interpreted as precluding the administration, in such circumstances, from being able to draw up a second report at the end of the extended probationary period. Indeed, according to case-law, where the probationary period of the person concerned has been extended, the competent authority may draw up a second report (see, to that effect, Case 175/80 *Tither* v *Commission* [1981] ECR 2345, paragraph 12). It

follows that the applicant is not justified in arguing that the procedure was unlawful on account of the fact that two end-of-probation reports were drawn up.

61 In the fourth place, the applicant claims that, by failing to consult the Staff Committee on the proposal to dismiss her, the AACC infringed Article 9(5) of the Staff Regulations. Such a submission must fail, however, given that Article 9(5), which provides that 'the opinion of the Reports Committee shall be sought … on action following completion of probationary service', relates to consultation of the Reports Committee, not the Staff Committee.

62 In the fifth place, it is not apparent from either the Conditions of employment or any other provision that, before adopting the dismissal decision, the AACC was obliged to consult the Eurojust College on that matter. Accordingly, the grounds of challenge relying on failure to consult that body must be rejected.

63 Since all of the arguments put forward in support of the first plea have been discounted, that plea must be rejected.

B – The second plea, alleging infringement of the general principle of law requiring reasons to be given for the decision and manifest errors of assessment of the facts resulting in errors of law

64 This plea consists, in essence, of three grounds of challenge relating, first, to the AACC's breach of the obligation to give reasons for the decision, secondly, manifest errors of assessment vitiating the dismissal decision and, thirdly, errors of law committed by Eurojust.

1. The first ground of challenge, claiming that the reasons given for the dismissal decision are inadequate and contradictory

a) Arguments of the parties

65 The applicant submits that, in the dismissal decision, the AACC simply referred to the 'negative outcome' of the probationary period and did provide any accompanying detail to enable the merits of that statement to be assessed. Moreover, that reasoning, based on the applicant's allegedly inadequate professional skills, also contradicts the reasoning in the letter accompanying the dismissal decision, which simply referred to 'reasons inherent to the service'.

66 Eurojust contends that the AACC gave adequate and consistent reasons for the dismissal decision.

b) Findings of the Tribunal

67 According to established case-law (Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22; Case T-171/05 *Nijs* v *Court of Auditors* [2006] ECR-SC II-A-2-999, paragraph 36), the obligation to state reasons is a fundamental principle of Community law which may be derogated from only for compelling reasons. Its purpose is, first, to enable the person concerned to determine whether or not the act adversely affecting him is justified and to consider whether it is appropriate to institute proceedings and, secondly, to enable the judicial review of the act.

68 In the present case, the dismissal decision expressly refers, first, to 'the recommendation made [by the head of unit] in the framework of the [second end-of-probation report]' and, secondly, to the 'previous reports produced on the performance of [the applicant] as Recruitment Officer of Eurojust'. In that recommendation and in those reports, which were made available to the applicant, the head of unit criticised the latter in particular for her lack of knowledge of the Staff Regulations, the difficulties in her relations with colleagues, her lack of team spirit, the general standard of her work, especially in preparing and managing recruitment files, and her reluctance to admit her mistakes.

69 The dismissal decision therefore contains a statement of reasons enabling the applicant to determine whether it is justified and the Tribunal to carry out its task of judicial review.

70 The applicant's argument that the reasoning in the dismissal decision, based on her allegedly inadequate professional skills, contradicts the reasoning in the letter accompanying that decision, which simply alluded to 'reasons inherent to the service', must be rejected. The 'reasons inherent to the service' were referred to in the letter accompanying the dismissal decision only in order to justify the fact that the applicant's presence on the agency's premises was no longer required as of 6 July 2005 and not as a justification for the dismissal.

71 Accordingly, the first ground of challenge must be regarded as unfounded.

2. The second ground of challenge, alleging that the dismissal decision is vitiated by manifest errors of assessment

72 This ground of challenge can be divided into two parts, the applicant contending, first of all, that the dismissal decision was made on grounds other than those stated by the AACC and, secondly, that her abilities were such that she merited being appointed as an established official.

a) The first part of the second ground of challenge, alleging that the dismissal decision was in fact based on grounds other than those stated by Eurojust

73 This part can be divided into two subsections, the applicant alleging, first of all, that the head of unit wanted to replace her with another member of staff, Mr F., in order to entrust him with similar duties to those she performed and, secondly, that she was subjected to psychological harassment by the head of unit.

The first subsection of the first part

– Arguments of the parties

74 The applicant points out that, in order to justify the dismissal decision, Eurojust referred to her allegedly inadequate professional abilities. However, according to the applicant, the true reasons for her dismissal were quite different. In fact, the applicant was dismissed because of the head of unit's hostility towards her, since he would have preferred Mr F., who also applied for the post of recruitment officer following the publication of vacancy notice 04/EJ/32, to be engaged instead of her. He did not therefore prepare the interim report and the end-of-probation reports objectively, his sole aim being to secure her dismissal. The applicant puts forward a number of circumstantial factors in support of her contentions.

75 First of all, the head of unit attempted to exert pressure on the selection board to reject the applicant's candidature. Secondly, having been informed that the applicant's candidature had none the less been successful, he stated, in the presence of the data protection officer, who was also a member of the selection board, that '[he would] just fire her at the end of the probationary period'. Thirdly, the head of unit refused to formalise the applicant's contract unless she submitted her passport itself, rather than a photocopy, her birth certificate and a character reference. Fourthly, in 2005, the head of unit endeavoured, by means of an unlawful selection procedure, to reverse the result of the first selection procedure in order that Mr F. should be engaged by any means possible for a post which would potentially have removed the applicant from her position. Fifthly, in breach of the principle of confidentiality, the head of unit arranged for company A, which had employed the applicant between 2001 and 2002, to be contacted in order to obtain evidence from which an unfavourable inference could be drawn so as to justify her dismissal, as evidenced by the e-mails sent to that company on 15 December 2004 and 16 June 2005. The applicant states that she became aware of the existence of those e-mails only on 27 November 2005, when she received a package of correspondence and e-mails pertaining to her.

76 In its defence, Eurojust disputes the applicant's argument that, from the beginning of the probationary period, the sole objective of the head of unit, who prepared the interim report and the end-of-probation reports, was to secure the applicant's dismissal.

77 With regard, in particular, to the circumstantial factor referred to by the applicant that, in its e-mails of 15 December 2004 and 16 June 2005, Eurojust contacted company A to obtain information that might justify her dismissal, Eurojust explains that, shortly after the applicant was employed, the agency attempted in vain to obtain from her documentary evidence relating to her professional experience and her place of origin, which was necessary for the purposes of determining her salary step as well as her entitlements. A meeting was therefore held on 10 December 2004 at which the applicant authorised the human resources unit directly to contact her former employers in order to request the information required, which the unit did on 15 December 2004 by approaching a number of companies, including company A. However, the information provided by that company on 20 December 2004 brought to light certain contradictions with the information in the applicant's application form for the post of recruitment officer. That explains why a second e-mail was sent to company A on 16 June 2005 with a view to supplementing the information in the applicant's file and initiating disciplinary proceedings against her if it were established that, at the time of her engagement, she had deliberately provided false information concerning her abilities and her professional experience.

– Findings of the Tribunal

78 It is necessary to examine the arguments put forward by the applicant in support of her contention that the head of unit, who would have preferred Mr F. to be engaged for the post mentioned in vacancy notice 04/EJ/32, had never accepted her being engaged instead of Mr F.

79 First of all, while the applicant maintains that the head of unit attempted to put pressure on the selection board to reject her candidature, she has not adduced any evidence to support such an assertion.

80 Secondly, nor has the applicant succeeded in establishing that the head of unit stated, in the presence of the data protection officer after being informed that the applicant's candidature had none the less been successful, that he '[would] simply fire her at the end of the probation period'.

81 Thirdly, the applicant fails to demonstrate which rules the head of unit infringed by asking her to present the original of her passport, a character reference and her birth certificate, when he was obliged to verify that the applicant was a national of a Member State of the Communities and ensure that she produced the appropriate character references as to her suitability pursuant to Article 12(2) of the Conditions of employment and, in addition, told the applicant that it was necessary to produce her birth certificate in order to be entitled to certain benefits. Therefore, and even if, as the applicant maintains, the normal practice of the human resources unit is simply to ask the members of staff concerned for a legible copy of their passport, the argument that it was incorrect to require the applicant to produce a number of documents, which, moreover, is not supported by any specific evidence, must be rejected.

82 Fourthly, the applicant submits that the head of unit attempted to recruit Mr F. as a member of the contract staff responsible for recruitment in order to replace her. While the applicant claims that a number of irregularities were committed in the course of the procedure for the recruitment of a member of the contract staff responsible for recruitment, and, in particular, that the time-limits which were allegedly to be complied with upon the publication of vacancy notice 05/EJ/CA/1 were not so complied with, she fails to demonstrate either that the time-limit laid down on publication of that vacancy notice was insufficient or which rules Eurojust thereby infringed.

83 It follows from the foregoing that the applicant's argument that Euojust's objective was to replace her by unlawfully engaging Mr F. as a member of the contract staff responsible for recruitment must be rejected. In fact, there is no evidence in the case-file to suggest that the purpose of either recruitment procedure 05/EJ/CA/1 or the procedure followed in drawing up the applicant's probationary reports was to replace her with Mr F.

84 Finally, the applicant relies on the argument that, by e-mails of 15 December 2004 and 16 June 2005, the head of unit contacted, through an assistant at the unit, company A, which had employed the applicant

between 2001 and 2002, for the sole purpose of gathering evidence from which an unfavourable inference could be drawn in order to justify her dismissal.

85 However, the applicant's contentions regarding the objectives pursued by the head of unit in sending those e-mails cannot be regarded as substantiated since, in the first place, it is apparent from the documents in the case-file that those e-mails were sent for other reasons and, in the second place, they could not have had a decisive impact on the dismissal decision.

86 First of all, it is apparent from the documents in the case-file that, in the letter of 14 September 2004 informing the applicant that her application for the post referred to in vacancy notice 04/EJ/32 had been successful, the head of unit drew her attention to the fact that, before the contract could be concluded, she was to provide the agency with certified copies of certificates covering all periods of employment mentioned in her curriculum vitae, stating starting and ending dates for each of those periods, so that her grade, salary step and entitlements could be determined.

87 It is not disputed that the applicant did not comply with that request, either when the contract was concluded on 16 October 2004 or, indeed, subsequently.

88 It was in those circumstances that the human resources unit sent the e-mail of 15 December 2004 to company A, in the same way in which it contacted other companies which had previously employed the applicant, requesting those companies, inter alia, to provide information on the type of contract under which the applicant had been employed by her former employers, the starting and ending dates and the number of hours worked per week and per month.

89 In response to that request of 15 December 2004, in an e-mail of 20 December 2004, company A indicated that the applicant had been engaged on 5 June 2001 and her contract had terminated on 10 April 2002. As regards the skills required for the post held by the applicant, company A added that the applicant's duties had simply entailed managing the company's client files and, to that end, she had been responsible for keeping the records and information relating to those files in order.

90 Such a response gave rise doubts as to the accuracy of the information provided by the applicant in her application for the post of recruitment officer, since the applicant had stated in that application that she had been employed by company A from 1 June 2001 until 30 June 2002 and that she had held the post of Human Resources Account Manager.

91 On 16 June 2005, Eurojust sent a second e-mail to company A, asking it to specify the reasons for which the applicant had left the position she held with the company.

92 In view of the circumstances in which it was sent, such an e-mail may be regarded, in the same way as the e-mail of 15 December 2004, to which it was a follow-up, as being the result of Eurojust's intention to obtain information on the grounds on which the applicant's employment with company A had terminated before the date indicated by the applicant in her application.

93 Accordingly, the e-mails sent on 15 December 2004 and 16 June 2005 cannot constitute evidence that the head of unit endeavoured to obtain from company A evidence from which an unfavourable inference could be drawn with the sole purpose of justifying the applicant's dismissal at some point in the future.

94 It is also to be noted that, while the AACC could, in the circumstances, have initiated disciplinary proceedings against the applicant, in the light of Article 50a of the Conditions of employment and in view of the terms of the declaration in the applicant's application for the post, according to which she 'declare[d] on [her] word of honour that the information provided [in the application form] [was] true [and that] if any statement [was] false or misleading [her] application (or appointment) might be disqualified', the administration has not submitted any evidence that it took steps to initiate such proceedings.

95 Secondly, while the applicant states that Eurojust based the dismissal decision on company A's response to the e-mail sent by the agency on 16 June 2005, Eurojust rejects that argument, contending that, while it was confirmed in the documents signed on 6 July 2005, the decision to dismiss the applicant was in fact taken on 14 June 2005, that is, prior to the date of that e-mail.

96 Admittedly, in support of its argument, Eurojust produces an e-mail sent by the head of the Eurojust College on 6 December 2006, which is worded as follows:

'On 14 June 2005, while I was attending meetings and representing Eurojust in Brussels, I learned that the Administrative Director in his capacity as [AACC] [had] taken the decision not to confirm [the applicant] in her contract. In order to fulfil my responsibilities as President of the College, I telephoned the Administrative Director … asking him to delay the communication of this decision to [the applicant] until I [had] the opportunity to discuss the matter in detail with him.'

97 However, such a document, which was created more than a year after the events it refers to, cannot demonstrate that the dismissal decision was taken on 14 June 2005 and communicated only on 6 July 2005, when the dismissal decision bears the title 'decision of 6 July 2005', states that it was '[d]one at the Hague, on 6 July 2005', and contains no indication of being a document notifying a decision which was taken on 14 June 2005.

98 None the less, even if the dismissal decision was made after the e-mail of 16 June 2005 was sent, the applicant has failed to establish that the AACC based his decision to any significant degree on the questions addressed in that e-mail, since, before that e-mail was sent, the head of unit had, in the successive probation reports, already given a negative assessment of the applicant's performance in carrying out her duties throughout her probationary period and had recommended to the AACC that her contract be terminated on that ground.

99 For the sake of completeness, it should be noted that, by a decision of 2 March 2006, the Administrative Director of Eurojust decided, pursuant to Article 20 of the decision setting up Eurojust and Article 9 of the Rules of Procedure, that the e-mail of 16 June 2005 and the response sent on the same day by company A were to be deleted from all of the agency's files, apart from the file on the applicant's complaint against the dismissal decision.

100 It follows from the foregoing that the applicant has failed to demonstrate that the grounds for her dismissal were other than those stated by the AACC.

The second subsection of the first part

101 The applicant submits that the dismissal decision is connected with the psychological harassment which she was subjected to when performing her duties.

– Arguments of the parties

102 In her application, the applicant states that the head of unit subjected her to harassment, inter alia, by making jokes at her expense about the colour of her skin, so that she was obliged, on the advice of the Legal Officer at Eurojust, to send him an e-mail on 12 November 2004 asking him to desist forthwith from such behaviour. In her reply, the applicant adds that the psychological harassment also took the form of an attempt by the head of unit to discredit her work during her probationary period. Finally, the fact that she was accompanied to her office by a member of the security staff on the day when the dismissal decision was notified to her constitutes, in her view, further evidence of the psychological harassment to which she was subjected.

103 Eurojust disputes the applicant's allegations that she was subjected to psychological harassment. In particular, as regards the jokes made by the head of unit which the applicant complained of in her e-mail of 12 November 2004, Eurojust acknowledged at the hearing that such jokes were in fact made but states that

that conduct, regrettable as it might have been, ceased following receipt of the applicant's e-mail and cannot therefore be treated as psychological harassment.

– Findings of the Tribunal

104 The applicant submits that the psychological harassment to which she was subjected took three forms. First of all, she claims that she was the butt of jokes by the head of unit about the colour of her skin. Next, the head of unit attempted to discredit her work. Lastly, she was at all times accompanied by a member of the security staff on the agency's premises on the day when the dismissal decision was notified to her.

105 As regards, first of all, the jokes made by the head of unit, the applicant, who originates from Nigeria, produces a copy of an e-mail sent to her hierarchical superior on 12 November 2004 in which she asked the latter to refrain from making allusions to the colour of her skin.

106 While Eurojust expressly acknowledged at the hearing that, on two occasions, the head of unit had made such jokes, it is not established that there were further instances of such jokes after the head of unit received the e-mail of 12 November 2004. In those circumstance, while being unacceptable, the head of unit's conduct cannot as such be classified as psychological harassment within the meaning of Article 12a of the Staff Regulations, which defines psychological harassment in paragraph 3 thereof as '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'.

107 On the other hand, the point must be made that it is contrary to the fundamental values on which the Community legal order is based for an official to make jokes of this nature at the expense of one of his colleagues, regardless of whether or not the conduct is repeated. The conduct on the part of the head of unit in this regard is therefore reprehensible. However, the applicant has failed to demonstrate that those two incidents, which occurred at the beginning of her probationary period, whether they are taken in isolation or in conjunction with the other facts she alludes to, had any effect on the subsequent assessments which led the Administrative Director of Eurojust to terminate her service (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, paragraph 286, and Case T-486/04 *Michail* v *Commission* [2008] ECR II-0000, paragraph 81). Accordingly, in spite of its being reprehensible, the fact that, on two occasions before 12 November 2004, the head of unit made jokes about the colour of the applicant's skin cannot, in the circumstances, be regarded as being such as to render the dismissal decision unlawful.

108 As regards, secondly, the head of unit's alleged attempt to discredit the applicant's work, the latter adduces no evidence enabling it to be established that she was subjected to conduct which was intended, from an objective viewpoint, to discredit her. Moreover, this allegation is made in circumstances in which the head of unit, both in the interim report and the end-of-probation reports, gave negative assessments of the applicant's professional abilities. The onus is thus on the applicant to demonstrate that she is not confusing negative assessments with an attempt to discredit her work. However, the applicant fails to establish either that she was subjected to conduct intended to discredit her or that the purpose of the alleged attempt to discredit her work was in fact to justify dismissing her. She cannot therefore rely on that alleged attempt to discredit her in support of her challenge of the dismissal decision.

109 Lastly, as regards the fact that the applicant was at all times, on the day when the dismissal decision was notified to her, accompanied by members of the security staff, it must be noted, as Eurojust submitted at the hearing without any effective contradiction, that the agency was simply applying the procedure normally followed upon the termination of service of members of staff. Therefore, in spite of the tactless manner in which it was carried out, the recourse to such a procedure cannot, in the circumstances, establish that the applicant was subjected to psychological harassment.

110 It follows from the foregoing that there is no basis for the applicant's claim that she was subjected to psychological harassment. The first part of the second ground of challenge must therefore be rejected.

b) The second part of the second ground of challenge, alleging that the applicant's abilities were such that she merited being appointed as an established official

Arguments of the parties

111 The applicant disputes the assessment that her work had not proved adequate for establishment in her post and states, in particular, that she discharged all the responsibilities set out in the official job description to the satisfaction of all those for and with whom she worked, that she demonstrated perfect knowledge of the Staff Regulations and that she ensured that recruitment procedures were conducted efficiently.

112 The applicant puts forward a number of factors in support of those contentions.

113 First of all, the applicant relies on an e-mail which was sent to her by the head of the Judicial Cooperation unit at the Council of the European Union, describing the assistance which the applicant had provided to that person as 'excellent'.

114 The applicant also points out that, in March 2004, while she was working for Eurojust as a member of the temporary staff, she was awarded a pay rise. From her perspective, it is difficult to understand how an employee who has worked successfully for almost a year and been awarded a pay rise should suddenly be regarded, three months later, as unfit for doing the same job.

115 Lastly, the applicant observes that the Staff Committee indicated that it did not approve of the dismissal decision.

116 In addition, the applicant requests the Tribunal to hear the testimony of a number of people who, in her view, can give evidence as to the quality of her professional performance.

117 Eurojust contends that the second part of the second ground of challenge should be rejected. In its view, it is apparent from the end-of-probation reports that the applicant's professional abilities were, for the most part, inadequate as regards, inter alia, her knowledge of the rules relating to staff, her ability to adapt to the human resources team and her ability to work more independently and take initiative. By way of illustration, Eurojust explains that, as a result of errors committed by the applicant, members of staff were engaged by the agency for posts for which they did not have the requisite professional experience. Eurojust also points out that, shortly after the applicant had been dismissed, an internal audit of the human resources unit was carried out in order to verify whether recruitment procedures organised between 1 April 2004 and 6 July 2005, the period during which the applicant was responsible for recruitment within the agency, had been properly conducted and that it was apparent from that audit that a number of recruitment files were incomplete.

118 Eurojust adds that the applicant cannot reasonably rely in support of the argument that her performance was of a high standard on the fact that she was awarded a pay rise, since that rise was granted in March 2004, when she was a member of the temporary staff, and was awarded to her on account, not of the quality of her work, but the level of responsibilities assumed.

119 In her reply, the applicant disputes having prepared incomplete recruitment files and states that Eurojust cannot rely on the results of the internal audit of the human resources unit. The applicant explains that she never received negative feedback from the auditors when she was still working for Eurojust. Moreover, the recruitment files which the internal audit allegedly found to be incomplete relate to a period after her dismissal. In any event, the applicant submits that the errors attributed to her were never brought to her attention during the probationary period and, moreover, no mention was made of them in the end-of-probation reports.

Findings of the Tribunal

120 It should be noted as a preliminary point that the administration enjoys a wide discretion when it comes to assessing the abilities and performance of a probationer member of the temporary staff in accordance with the interests of the service and it is therefore not for the Tribunal to substitute its own judgment for that of the institutions in so far as concerns their assessment of the outcome of a probationary period, except where there are manifest errors of assessment or there is a misuse of powers (see, by analogy, Case C-17/88 *Patrinos* v *ESC* [1989] ECR 4249, summary publication, paragraph 33, and Joined Cases T-373/00, T-27/01, T-56/01 and T-69/01 *Tralli* v *ECB* [2002] ECR-SC I-A-97 and II-453, paragraph 76).

121 It is necessary in the present case to examine the evidence put forward by the applicant which, in her view, is such as to establish that there was a manifest error of assessment.

122 The applicant relies, first of all, on a copy of an e-mail which was sent to her by the head of the Judicial Cooperation unit at the Council describing the assistance which the applicant had provided to him as 'excellent'. However, this letter, which is undated and is from a person who does not work at Eurojust, cannot establish that, in deciding that her employment should be terminated, the AACC made a manifest error in assessing the applicant's professional abilities.

123 The applicant next relies on the pay rise awarded to her, which, in her view, establishes that there was a manifest error of assessment. However, it is apparent from the document in the case-file that that rise was awarded in March 2004, at a time when the applicant was a member of the temporary staff at Eurojust and was granted, as Eurojust correctly points out, on account of the level of responsibilities assumed by the applicant, not the quality of her performance.

124 Moreover, Eurojust produces documents from which it is apparent that a number of the criticisms in the interim report and the end-of-probation reports were valid. That is so, in particular, with regard to the report for the audit carried out between September and December 2005 concerning the proper conduct of the recruitment procedures organised, in particular, between 16 October 2004 and 6 July 2005, the period during which the applicant was a probationer member of the temporary staff at Eurojust, and from which it is apparent that a significant number of recruitment files for which the applicant was responsible were incomplete.

125 While the applicant disputes the agency's interpretation of the results of that audit, submitting, inter alia, that she was never criticised during her probationary period for having compiled incomplete recruitment files, it is clear that the applicant's contentions are contradicted by the probation reports, which refer expressly to the applicant's shortcomings in this area.

126 Finally, the applicant can derive no support from the memorandum which the Eurojust Staff Committee sent to the AACC to express its disapproval of the dismissal decision. In fact, in that memorandum, the Staff Committee did not offer any assessment of the quality of the applicant's performance but simply criticised the fact that it had not been consulted before that decision was taken and that the dismissal had taken place in the context of a tense social climate.

127 The applicant's contention that the AACC committed a manifest error of assessment in considering that her work had not proved adequate to justify retention in her post is therefore not justified.

128 It follows, without there being any need to accede to the applicant's request for witnesses to give testimony, since the Tribunal is able to adjudicate on the case on the basis of documents produced at the hearing, that the applicant's second ground of challenge must be rejected.

3. The third ground of challenge, alleging that the dismissal decision is vitiated by errors of law

a) Arguments of the parties

129 The applicant submits, in essence, that the transmission of the e-mail of 16 June 2005 to company A constitutes a breach of the principle of confidentiality and was therefore unlawful. She also argues that

such an exchange of correspondence pertaining to her is contrary to Article 26 of the Staff Regulations.

130 Eurojust disputes those assertions.

b) Findings of the Tribunal

131 While the applicant essentially submits that the head of unit committed an error of law by informing company A in the e-mail of 16 June 2005 that the agency intended to dismiss her for incompetence, she fails to establish what effect such a message could have had on the dismissal decision. That argument must therefore be disregarded. In any event, and even if the applicant may be regarded as relying on a breach of Article 10 of the Rules of Procedure, it must be noted that, even if it were established, such a breach would have no effect on the legality of the contested decision by which the AACC dismissed the applicant.

132 The ground of challenge alleging infringement of Article 26 of the Staff Regulations will be rejected in the course of the assessment of the third plea.

133 It follows from the foregoing that the third ground of challenge, alleging that the dismissal decision was vitiated by errors of law, must be rejected.

134 Since each of the three grounds of challenge of the second plea has been rejected, that plea must be dismissed as unfounded.

C – The third plea, alleging infringement of the rights of the defence

1. Arguments of the parties

135 The applicant puts forward three grounds of challenge in support of the plea alleging infringement of the rights of the defence.

136 First of all, the e-mail sent on 16 June 2005 by the assistant at the Eurojust human resources unit to company A and the response received on the same day by that assistant were not placed on the applicant's personnel file before the dismissal decision was taken, in breach of Article 26 of the Staff Regulations and, what is more, were not brought to her attention. None the less, the AACC relied on those documents in dismissing the applicant.

137 Secondly, during the probationary period, the head of unit never invited her to a meeting to inform her of the alleged inadequacy of her performance and, furthermore, did not give her any guidance which would have enabled her to improve her performance.

138 Thirdly, the comments submitted by the applicant after the interim report and the two end-of-probation reports had been produced were greeted with silence by the head of unit. The applicant infers from this that her rights of defence were infringed.

139 Eurojust rejects each of the applicant's three grounds of challenge.

140 First of all, Eurojust submits that, though notified on 6 July 2005, the dismissal decision was taken on 14 June 2005. Consequently, the exchange of e-mails on 16 June 2005 did not have any effect on that decision and are therefore unconnected with the present dispute. Eurojust therefore claims that the sole purpose of the exchange of e-mails was to supplement the information in the applicant's personnel file and, if necessary, to instigate disciplinary proceedings against her if it were established that, at the time when she was recruited, she had made false statements about her abilities and her professional experience.

141 In second place, Eurojust submits that the applicant had the opportunity to submit comments on the various reports which were drawn up.

142 In third place, Eurojust states that the applicant's comments were duly and carefully analysed, studied and taken into account by the AACC in the decision-making process.

2. Findings of the Tribunal

a) The first ground of challenge, alleging that the AACC based its decision on e-mails which had not been placed on the applicant's personnel file

143 According to settled case-law, the purpose of the first and second paragraphs of Article 26 of the Staff Regulation, which is applicable to members of the temporary staff by virtue of the reference made in the first paragraph of Article 11 of the Conditions of employment, is to ensure observance of an official's rights of defence by preventing administrative decisions which affect that official's administrative status and career from being based on facts relating to his conduct which are not referred to in his personnel file (see Case T-283/03 *Recalde Langarica* v *Commission* [2005] ECR-SC I-A-235 and II-1075, paragraph 67).

144 However, infringement of Article 26 of the Staff Regulations can lead to annulment of a measure only if it is established that the documents in question could have had a decisive effect on the contested decision (*Recalde Langarica* v *Commission*, paragraph 68).

145 In the present case, it is not apparent from any material in the case-file that, in taking the dismissal decision, the AACC acted on the basis of the e-mails exchanged on 16 June 2005 between Eurojust and company A. While the dismissal decision was taken, as its wording explicitly states, on 6 July 2005, namely after those e-mails had been exchanged, the AACC, in order to terminate the applicant's contract, referred expressly only to the interim report and the end-of-probation reports, all of which were produced before the e-mails were exchanged. Moreover, before the date of that exchange, the head of unit had already recommended to the AACC that the applicant be dismissed.

146 It follows from the foregoing that the e-mails exchanged on 16 June 2005 cannot be regarded as having a decisive effect on the dismissal decision. There is therefore no foundation for the applicant's argument that the dismissal decision was taken in breach of the rights of the defence simply because those e-mails were not placed on her personnel file before that decision was taken.

147 The first ground of challenge must, accordingly, be rejected.

b) The second ground of challenge, alleging that the applicant was not informed, during the probationary period, of her alleged incompetence

148 According to established case-law, observance of the rights of the defence is, in all procedures initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law. That principle, which serves to ensure sound administration, requires that the person concerned must have been afforded the opportunity effectively to make known his views on any incriminating information taken into account for the purpose of adopting such a measure (see Case C-344/05 P *Commission* v *De Bry* [2006] ECR I-10915, paragraphs 37 and 38; Case T-277/03 *Vlachaki* v *Commission* [2005] ECR-SC I-A-57 and II-243, paragraph 64; and Case T-182/04 *Van der Spree* v *Commission* [2006] ECR-SC II-A-2-1049, paragraph 70).

149 Where a member of the temporary staff is dismissed at the end of the probationary period, the principle that the rights of the defence are to be observed applies by virtue of the third paragraph of Article 14 of the Conditions of employment, which provides that the report that is to be made one month before the expiry of the probationary period on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his conduct and efficiency in the service 'shall be communicated to the person concerned, who shall have the right to submit his comments in writing'. On the other hand, that principle does not place the administration under an obligation to warn a member of the temporary staff during the probationary period that his performance is unsatisfactory (see, by analogy, 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).

150 Accordingly, even if, in the present case, Eurojust had failed to notify the applicant of her alleged incompetence, such circumstances would not be sufficient to constitute an infringement of the principle that the rights of the defence must be observed, since the reports on which the administration relied in recommending the dismissal were duly communicated to the applicant.

151 Moreover, in the interim report, the head of unit drew the applicant's attention to her professional shortcomings and requested her to improve her relations with her colleagues and broaden her knowledge of legal provisions relating to recruitment.

152 The second ground of challenge cannot therefore be upheld.

c) The third ground of challenge, alleging that the AACC failed to take account of the applicant's comments

153 It is not disputed that, on 1 February 2005, the applicant submitted her comments after receiving the interim report. She also submitted observations on 10 March and 13 June 2005, after the two end-of-probation reports had been drawn up. In those circumstances and in view of the fact that the applicant sent those comments to her hierarchical superior, she cannot maintain that there was failure to observe the rights of the defence.

154 Accordingly, the ground of challenge cannot be upheld.

155 It follows from the foregoing that the third plea must be rejected as unfounded.

D – The fourth plea, alleging infringement of the general principle of sound administration

1. Arguments of the parties

156 The applicant submits that, on a number of occasions, Eurojust infringed the principle of sound administration.

157 That the principle of sound administration was infringed is thus illustrated by the discrepancy that exists between the formal reason given for her dismissal, namely her allegedly inadequate performance, and the real reasons for the dismissal.

158 Moreover, the head of unit endeavoured, equally in breach of the principle of sound administration, to gain access to documents in order to use them against the applicant without informing her that such a procedure had taken place and without filing them in her personnel file.

159 Lastly, Eurojust extended the probationary period with the sole aim of preparing for her dismissal at some future date.

160 Eurojust disputes that it infringed the principle of sound administration. It submits that it took into consideration both the interests of the applicant, inter alia by extending her probationary period, and the interests of the service, by taking account of the applicant's inadequate performance.

2. Findings of the Tribunal

161 While the applicant, in pleading infringement of the principle of sound administration, maintains first of all that there is a discrepancy between the formal reason given for her dismissal, namely her allegedly inadequate performance, and the real reasons for the dismissal, such an assertion, which has already been rejected as unfounded in connection with the examination of the preceding pleas, cannot to any greater extent be accepted in connection with this plea. The same applies to the assertion that Eurojust failed to

inform the applicant of the existence of the e-mails exchanged with company A and to place those documents in her personnel file.

162 Nor, moreover, is there any ground for the applicant's argument that Eurojust infringed the principle of sound administration by deciding to extend her probationary period with the sole aim of preparing for her dismissal at some point in the future, since she produces no objective relevant evidence to establish that such an assertion is well founded.

163 The fourth plea must therefore be rejected.

E – The fifth plea, alleging misuse of powers

1. Arguments of the parties

164 In the application, the applicant submits that, in deciding to dismiss her, Eurojust failed to have regard to the general interest and took a decision 'on a purely subjective basis', with the sole aim of terminating her contract 'without any reason'.

165 The applicant adds that the head of unit intended to dismiss her regardless of the quality of her work. Thus, on 15 December 2004, that is, less than two months after the beginning of her probationary period, he instructed the assistant at the unit to contact company A with the aim of gathering evidence that could justify terminating her contract.

166 In her reply, the applicant states that the dismissal decision was taken, not in the interests of the service, but because of the hostility of the head of unit, who wanted Mr F. to be engaged on the basis of vacancy notice 04/EJ/32 and not, as it transpired, the applicant.

167 Eurojust contends that the applicant fails to adduce any evidence to indicate that the agency used its powers for any purpose other than that for which they were conferred on it.

2. Findings of the Tribunal

168 According to the applicant, the contested decision is marred by misuse of power, since it fails to have regard to the 'general interest'. However, according to established case-law, the concept of misuse of powers refers primarily to the use of powers by an administrative authority for a purpose other than that for which they were conferred on it. A decision is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the purpose of achieving an end other than that stated (Case C-121/01 P *O'Hannrachain* v *Parliament* [2003] ECR I-5539, paragraph 46).

169 In the present case, the plea alleging that the dismissal decision is vitiated by misuse of powers relies essentially on a ground of challenge previously referred to in connection with the second plea, namely the claim that the dismissal decision was taken because of the hostility of the head of unit, who would have preferred Mr F. to be engaged on the basis of vacancy notice 04/EJ/32. That grievance was rejected on the ground that the applicant failed to adduce any evidence to support her contentions. Accordingly, for the same reasons, this plea must be rejected as unfounded.

170 Since all of the pleas put forward by the applicant in support of her claim for the annulment of the dismissal decision have been rejected, that claim must be dismissed as unfounded.

II – The claim that the applicant should be reinstated within Eurojust with effect from 6 July 2005

171 The Tribunal has no jurisdiction to issue orders in the context of judicial review based on Article 91 of the Staff Regulations and cannot, therefore, order Eurojust to reinstate the applicant to her post (Case T-588/93 *G* v *Commission* [1994] ECR-SC I-A-277 and II-875, paragraph 26, and Case T-197/98 *Rudolph* v *Commission* [2000] ECR-SC I-A-55 and II-241, paragraph 92).

172 That claim is therefore inadmissible.

III – The claim for damages

A – Arguments of the parties

173 The applicant submits that she suffered material and non-material damage. She maintains that the head of unit attempted, first of all, to prevent her being engaged by the agency and then, having failed in that endeavour, tried to discourage her from remaining there. Since that endeavour was also unsuccessful, he attempted to obtain any evidence that could justify her dismissal and, to that end, approached a former employer of the applicant's without informing her of that approach, in breach of the principle of confidentiality. He attempted, by unlawful means, to have Mr F. engaged for a post for which the duties were very similar, not to say identical, to those performed by the applicant. He also produced three successive reports, the sole purpose of which was to denigrate the applicant and to justify her dismissal at some point in the future. Lastly, he slandered her in public, falsely accusing her of destroying documents in a previous job. The applicant also claims that she was subjected to psychological harassment by her hierarchical superior.

174 Eurojust contends that the claim for damages should be dismissed, observing, in essence, that the applicant has failed to establish that the dismissal decision was unlawful and or to adduce any evidence that could demonstrate that she was subjected to psychological harassment.

B – Findings of the Court

175 According to settled case-law, under the system of remedies established by Articles 90 and 91 of the Staff Regulations, an action for damages 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 having adverse effects 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 first case, it is for the person concerned to submit to the appointing authority, within the prescribed time-limit, a complaint directed against the act in question. Where there is a direct link between an action for annulment and an action for damages, the action for damages is admissible as being ancillary to the action for annulment, without necessarily having to be preceded by a request to the appointing authority for compensation for the damage allegedly suffered and by a complaint challenging the correctness of the implied or express rejection of the request. In the second 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 continue, where appropriate, with a complaint against the decision rejecting that request (Case T-15/96 *Liao* v *Council* [1997] ECR-SC I-A-329 and II-897, paragraphs 57 and 58; Case T-378/00 *Morello* v *Commission* [2002] ECR-SC I-A-311 and II-1497, paragraph 102; and Case T-324/02 *McAuley* v *Council* [2003] ECR-SC I-A-337 and II-1657, paragraph 91).

176 In the present case, while the applicant has claimed that Eurojust should be ordered to pay her the sum of EUR 200 000 by way of compensation for the damage she suffered, she has failed to provide, either in the written pleadings or in the explanations given at the hearing, any indication as to the quantum of the damage suffered as a result of the decision, on the one hand, and as a result of conduct on the part of the administration which contains nothing in the nature of a decision, on the other hand.

177 However, without there being any need for that quantum to be stated, the claim for compensation in question cannot be upheld.

178 As regards the claim for compensation only for the damage arising, according to the applicant, as a result of the dismissal decision, the heads of claim seeking annulment of that decision have been rejected as unfounded. Accordingly, the applicant's claim for compensation for the damage she suffered as a result of that decision cannot be upheld.

179 The claim for compensation for the damage resulting from conduct on the part of the administration which contains nothing in the nature of a decision and which is independent of the dismissal decision was not preceded by any request to the administration for reparation for such damage or a complaint in which the applicant challenged the correctness of the implied or express rejection of her request. Such a claim for damages must therefore be dismissed as inadmissible.

180 In those circumstances, all of the claims for damages must be rejected.

181 It follows from all of the foregoing that the action must be dismissed.

Costs

182 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 entered into force, namely 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.

183 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, pursuant to Article 88 of the same rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. Since the applicant has been unsuccessful, each party must be ordered to bear its own costs.

On those grounds,

THE TRIBUNAL (Third Chamber)

hereby:

1. Dismisses the action;

2. Orders each party to bear its own costs.

Mahoney Boruta Tagaras

Delivered in open court in Luxembourg on 10 July 2008.

W. Hakenberg P. Mahoney

Registrar President

Table of contents

The first subsection of the first part

– Arguments of the parties

– Findings of the Tribunal

The second subsection of the first part

– Arguments of the parties

– Findings of the Tribunal

b) The second part of the second ground of challenge, alleging that the applicant's abilities were such that she merited being appointed as an established official

Arguments of the parties

Findings of the Tribunal

3. The third ground of challenge, alleging that the dismissal decision is vitiated by errors of law

a) Arguments of the parties

b) Findings of the Tribunal

C – The third plea, alleging infringement of the rights of the defence

1. Arguments of the parties

2. Findings of the Tribunal

a) The first ground of challenge, alleging that the AACC based its decision on e-mails which had not been placed on the applicant's personnel file

b) The second ground of challenge, alleging that the applicant was not informed, during the probationary period, of her alleged incompetence

c) The third ground of challenge, alleging that the AACC failed to take account of the applicant's comments

D – The fourth plea, alleging infringement of the general principle of sound administration

1. Arguments of the parties

2. Findings of the Tribunal

E – The fifth plea, alleging misuse of powers

1. Arguments of the parties

2. Findings of the Tribunal

II – The claim that the applicant should be reinstated within Eurojust with effect from 6 July 2005

III – The claim for damages

A – Arguments of the parties

B – Findings of the Court

Costs

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* Language of the case: English.