Reports of Cases

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

28 October 2010*

(Civil service — Officials — Decision to dismiss — Duty to have regard for the welfare of officials — Incompetence — Medical reasons)

In Case F-92/09,

ACTION under Articles 236 EC and 152 EA,

U, a former official of the European Parliament, residing in Luxembourg (Luxembourg), represented by F. Moyse, and A. Salerno, lawyers,

applicant,

v

European Parliament, represented by S. Seyr, K. Zejdová and J.F. de Wachter, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (Second Chamber),

composed of H. Tagaras, President, S. Van Raepenbusch (Rapporteur) and M.I. Rofes i Pujol, Judges,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 8 July 2010,

gives the following

Judgment

1 By application lodged at the Registry of the Tribunal on 6 November 2009, the applicant seeks annulment of the decision of 6 July 2009 by which the European Parliament dismissed her with effect from 1 September 2009 ('the contested decision') and payment of a sum of EUR 15 000, subject to all proper reservations, as compensation for the non-material harm which she considers herself to have suffered.

* Language of the case: French.

Legal context

2 Article 9(6) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') provides:

'The opinion of the Joint Advisory Committee on professional incompetence shall be sought for the application of Article 51.'

3 Article 24 of the Staff Regulations provides:

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

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

4 Article 51 of the Staff Regulations provides:

'1. Each institution shall define procedures to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion. Once these procedures have been exhausted, an official who, on the basis of consecutive periodical reports referred to in Article 43, still proves incompetent in the performance of his duties may be dismissed, downgraded or classified in a lower function group at the same grade or a lower grade.

2. Any proposal to dismiss, downgrade or classify an official in a lower function group shall set out the reasons on which it is based and shall be communicated to the official concerned. The proposal from the Appointing Authority shall be referred to the Joint Advisory Committee referred to in Article 9(6).

3. The official shall have the right to obtain his complete personal file and to take copies of all documents relating to the procedure. He shall have at least fifteen days from the date of receipt of the proposal to prepare a defence. He may be assisted by a person of his choice. The official may submit written comments. He shall be heard by the Joint Advisory Committee. The official may also call witnesses.

4. The institution shall be represented before the Joint Advisory Committee by an official designated for that purpose by the Appointing Authority. That official shall have the same rights as the official concerned.

5. In the light of the proposal under paragraph 2 and any written and verbal statements from the official concerned or from witnesses, the Joint Advisory Committee shall deliver by a majority a reasoned opinion stating the measure which it considers appropriate in the light of the facts established at its request. It shall forward that opinion to the Appointing Authority and to the official concerned within two months of the date on which the matter is referred to it. The chairman shall not vote on decisions of the Joint Advisory Committee, except in procedural matters and where votes are tied.

The Appointing Authority shall take a decision within two months of receipt of the Joint Advisory Committee's opinion, after hearing the official. The decision shall be substantiated. It shall indicate the date on which it takes effect.

6. An official dismissed for incompetence shall, for the period defined in paragraph 7, be entitled to a monthly dismissal allowance equal to the basic monthly salary of an official in the first step of grade 1. The official shall also be entitled during the same period to the family allowances provided for in Article 67. The household allowance shall be calculated on the basis of the basic monthly salary of an official in grade 1 in accordance with Article 1 of Annex VII.

The allowance shall not be paid if the official resigns after the start of the procedure referred to in paragraphs 1, 2 and 3 or if he is entitled to the immediate payment of a full pension. If he is entitled to unemployment benefit under a national unemployment scheme, the amount of that benefit shall be deducted from the above allowance.

7. The period during which the payments referred to in paragraph 6 are to be made shall be:

(a) three months where the official has completed less than five years' service at the date on which the dismissal decision is taken;

(b) six months where the official has completed at least five years' service but less than ten;

(c) nine months where the official has completed at least 10 years' service but less than 20;

(d) 12 months where the official has completed over 20 years' service.

8. Officials who are downgraded or classified in a lower function group on grounds of incompetence may after a period of six years ask for all references to that measure to be deleted from their personal files.

9. Officials shall be entitled to reimbursement of reasonable expenses incurred on their initiative in the course of the proceedings, including fees payable to a defending adviser not belonging to the institution, where the proceedings provided for in this Article end without any decision being taken to dismiss, downgrade or classify the official in a lower function group.'

5 Article 59 of the Staff Regulations provides:

'1. An official who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave.

…

4. The Appointing Authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than 12 months in any period of three years.

5. An official may be required to take leave after examination by the institution's medical officer if his state of health so requires or if a member of his household is suffering from a contagious disease.

…'

6 Article 1 of the Internal Rules on the remedial procedure to certify, deal with and remedy potential cases of incompetence on the part of officials, adopted by the Bureau of Parliament on 3 July 2006 ('the Internal Rules') provides:

'The procedure for dealing with incompetence established by these internal rules in accordance with Article 51(1) of the Staff Regulations (hereafter referred to as the "remedial procedure") is intended to ensure that each case is dealt with at an early stage and systematically in order to help the official concerned to bring his performance back up to the level required for the purpose of carrying out the

tasks described in the staff report, in accordance with the job description, thereby avoiding the necessity to take measures with regard to him as referred to in Article 51(1) of the Staff Regulations (dismissal, downgrading or classification in a lower function group at the same grade or a lower grade).'

7 Article 3(1) of the Internal Rules provides:

'The remedial procedure shall be applied in parallel with the staff report procedure laid down in the General implementing provisions on staff reports … (hereafter referred to as "GIPSR").'

8 Article 7 of the Internal Rules provides:

'1. As soon as any signs of incompetence are identified, the first assessor shall summon the official to an interview by means of a note, informing him of its purpose. In the note, he shall inform the official of his rights as laid down in Article 14 of these Rules. After the interview, the first assessor shall inform the final assessor by letter, stating reasons. The official shall receive a copy of this letter.

2. The final assessor shall, if appropriate, inform the Directorate for Human Resource Strategy, [Directorate-General (DG) for Personnel], in order for it to appoint an adviser. The final assessor shall immediately summon the official for an interview. The first assessor and the adviser shall also attend it.

3. During the interview, the final assessor shall identify the reasons for the inadequacies noted, shall, if appropriate, decide to initiate the remedial procedure and shall draw up a support programme (hereafter referred to as the "remedial plan") for the official. He shall inform the official of everything which the remedial procedure involves.

…'

9 Article 8 of the Internal Rules provides:

'1. If, during the interview provided for in Article 7 …, the final assessor concludes that the signs observed on the part of the official may be due to difficulties of a medical nature or if the official mentions difficulties of this kind, he shall immediately seek information from the [m]edical [s]ervice. In this case, any decision to open the remedial procedure and adopt a remedial plan shall be postponed until the reply from the [m]edical [s]ervice is received.

2. The [m]edical [s]ervice shall communicate its reply in writing to the final assessor, the official concerned and the adviser, strictly respecting the rules on medical confidentiality and the confidentiality of personal data.

3. If the [m]edical [s]ervice replies that the situation of the official should be dealt with solely pursuant to the provisions of the Staff Regulations relating to the state of health of officials, the final assessor shall not be permitted to initiate the remedial procedure in respect of him. The official, the first assessor and the adviser shall be kept informed.

4. Otherwise, the final assessor shall again summon the official, the first assessor and the adviser in order to initiate the remedial procedure and draw up the remedial plan.

5. The [m]edical [s]ervice may subsequently intervene at any time by communicating in writing to the final assessor and the official its assessment of the state of health of the official and the conclusions it has drawn from it. The first assessor, the adviser and the official concerned shall be kept informed of this. On the basis of these conclusions, the final assessor may, depending on the circumstances, decide to initiate the remedial procedure or close a remedial procedure which has already been initiated.'

10 Article 12 of the Internal Rules provides:

‘1. During July, the interim report referred to in Article 17(2) of the GIPSR shall be drawn up, after an interview between the two assessors and the official in the presence of the adviser. The interim report shall be dated and signed by the two assessors and the official, who may, if appropriate, add comments. The adviser shall receive a copy.

2. If the interim report concludes that the official is no longer displaying signs of incompetence, the final assessor shall close the remedial procedure and Article 13 … shall not apply. Otherwise, having sought the opinion of the adviser, the final assessor shall confirm the continuation of the remedial procedure until the end of the reference year. In either case, the official shall be informed by means of a written note..

…’

Facts

11 The applicant was appointed an official of the Parliament on 1 May 2005 as a secretary, grade C*1 (now AST 1). She was established following her probationary period which took place from 1 May 2005 to 31 January 2006 in the Planning and Demand Management Unit of DG Translation and Publication.

12 In the staff report for 2005, the applicant’s first assessor stated that she was a valued new colleague. In that same staff report, she was considered to be a meritorious official.

13 In the applicant’s staff report for 2006, even though she was still seen as a meritorious official, it was stated that she needed to improve her communication skills, that a lack of communication occasionally caused problems as regards human relations and that ‘although her performance [was] satisfactory, [her] willingness to communicate with the members of the team [had] declined’.

14 By letter of 10 July 2007, the Head of Office of the Planning and Demand Management Unit of DG Translation and Publication (‘the Head of Office’) asked the Director-General of that DG (‘the Director-General’) to ‘consider the possibility of initiating the remedial procedure’ in respect of the applicant. In that letter, the Head of Office mentioned the existence of the interview which he had had with her on 9 July 2007, in accordance with the provisions of Article 7(1) of the Internal Rules.

15 The Head of Office also sent the Director-General a letter dated 8 August 2007, in which he referred, inter alia, to inadequate processing by the applicant of requests for translation, to her inability to communicate with her colleagues, to her unauthorised absences, and to her rude and unprofessional behaviour. He also wrote in that letter:

‘[The applicant] is a person with a university level of education, who probably feels frustrated by the fact that she has to perform tasks of an assistant. I have the very distinct impression that [the applicant] despises the work and considers it pointless. It is also important to note that her performance and conduct changed radically after establishment.’

16 Pursuant to Article 7(2) of the Internal Rules, the applicant attended two interviews, on 17 and 20 September 2007. Following those interviews, on 24 September 2007, a remedial procedure was initiated, with a remedial plan applying until 31 December 2007. In the context of that procedure, the Head of Office was the first assessor and the Director-General the final assessor.

17 Following a further interview with the applicant, which took place on 3 December 2007, the Director-General decided, by letter of 10 December 2007, to extend the remedial procedure. In that letter, he nevertheless noted the existence, since the initiation of the remedial procedure, of progress as regards the applicant's standard of performance and her behaviour.

18 The staff report for 2007, drawn up in March and April 2008, stated, inter alia, that, despite numerous warnings, the applicant's performance had deteriorated considerably during 2007. Indeed, in that report the applicant was no longer rated as being a meritorious official.

19 Pursuant to Article 12 of the Internal Rules, an interim report was drawn up in July 2008. That report, covering the period from 1 January to 30 June 2008, stated, inter alia, that the applicant had partially improved her conduct towards the departments and colleagues with whom she was in contact. Although the report did not conclude that she was incompetent, it pointed out that the improvements observed had to be confirmed by sustained and long-term progress in her overall performance.

20 By letter of 9 July 2008, the Head of Office informed the applicant that the remedial procedure would be continued until the end of 2008.

21 On 12 August 2008, the applicant was invited to report to the medical service on 14 August 2008.

22 On 4 September 2008, at the request of the human resources officer of DG Translation and Publication, who was concerned that the applicant had not responded to the medical service's invitation mentioned in the previous paragraph, a welfare officer of the Parliament went to see the applicant at her place of work. According to that welfare officer, the applicant told her during that interview that her superiors did not need to 'worry' about her.

23 On 13 October 2008, as part of the remedial procedure, and during an interview which took place in the presence of the Head of Office, it was proposed to the applicant that she be transferred to Unit 'X' of DG Translation and Publication. Since that proposal met with the applicant's approval, she joined that Unit during October 2008. During the abovementioned interview it was decided that, owing to the applicant's annual leave in December 2008, the final interview relating to the remedial procedure would be brought forward to 26 November 2008.

24 On 19 November 2008, the Head of Office and the Director-General were the addressees of an email sent by an administrator of Unit 'X' to which the record of a meeting held on 5 November 2008 between that administrator and the head of that Unit, concerning the integration of the applicant within that Unit, was attached. That record stated, inter alia, that the applicant was showing goodwill, but that she was encountering problems of communication with her colleagues, that she was isolated within the Unit because of her behaviour and that the Head of the Unit in question feared that that behaviour would damage the atmosphere within the Unit in the long term. It also stated that every effort had been made to offer the applicant psychological assistance — from a doctor or a social worker — if need be, but that she had denied having problems and had declined all help.

25 On 20 November 2008, the applicant, this time responding to the invitation of the Parliament's medical officer, was received by the latter in the presence, in part, of the Parliament's welfare officer.

26 During the interview mentioned in paragraph 23 of this judgment, the applicant was informed that her performance in Unit 'X' had not been deemed satisfactory and that her difficulties were probably caused by her own behaviour. The Head of Office also informed the applicant that he was going to propose to the appointing authority that she be dismissed.

27 Pursuant to Article 13 of the Internal Rules, the special report was drawn up on 18 December 2008. That report stated, inter alia, that the fact that the applicant's work and behaviour had not improved within Unit 'X' showed that the difficulties which she was encountering were due solely to her own

behaviour and not to her colleagues or to the fact that she was working in a multicultural environment. In conclusion, the applicant's dismissal was proposed to the appointing authority by the Head of Office and the Head of the Demand Management Unit on account of the persistence of her inadequacies in the areas of communication and conflict resolution and her reluctance to understand or follow instructions and to take responsibility for her actions.

28 The staff report for 2008, drawn up in February 2009, referred to the same problems as those mentioned in the conclusion of the special report drawn up on 18 December 2008.

29 The opinion of the Joint Advisory Committee on professional incompetence ('the Committee') on the proposal to dismiss the applicant was then sought.

30 In an opinion delivered unanimously on 14 May 2009 ('the opinion'), the Committee stated not only that a number of persons who had worked with the applicant had informed her that they had doubts regarding her mental state, but also that the Committee itself had had the distinct impression, on hearing her, that she was in an unstable or disturbed mental state.

31 The Committee also pointed out that the hearings which it had conducted had revealed a convergent opinion among the applicant's hierarchical superiors that she had, shortly after her establishment, begun to manifest unusual behaviour, including, inter alia, periodic bouts of antisocial attitude towards her colleagues, refusal to take responsibility for the tasks falling to her, and this for no obvious reason or for eccentric reasons, or else inappropriate bursts of laughter. Moreover, it had emerged, during the Committee's deliberations, that DG Translation and Publication had contacted the Parliament's medical service in August 2008 and that the latter had offered the applicant an appointment in order to review the 'signs of possible depression' which it had already detected in December 2006, but that the applicant had not responded to that invitation; DG Translation and Publication had then asked the Parliament's welfare service to intervene, but it had met with a refusal on the part of the applicant.

32 In the opinion, the Committee concluded that the applicant was not capable of performing satisfactorily the professional tasks assigned to her and of working within a multicultural environment such as that of the Parliament. It also concluded that the administration should investigate whether the applicant's incompetence was due to medical reasons. Finally, it approved the proposed dismissal in so far as it was demonstrated that the applicant's incompetence was not due to medical reasons or in so far as she refused to undergo the medical examinations necessary to refute the medical origin of her professional difficulties.

33 The applicant, who was heard by the administration on 25 June 2009, was dismissed by the contested decision which was notified to her on 7 July 2009.

34 On 7 August 2009, the medical officer of the Parliament in Luxembourg asked a doctor specialising in psychiatry to examine the applicant. In his opinion conveyed by letter of 18 August 2009, that doctor diagnosed a 'fragile personality disorder' after stating:

'The psychiatric examination does not show any signs of mental confusion: [the applicant] is well oriented in time and space. There are no clear-cut psychotic symptoms. [The applicant] does not express any suicidal ideations. However, as she talks I note latent ideas of persecution The impression of having been hurt is present and the impression that she is not liked[,] that her colleagues do not understand [her] and that no-one takes into account her cultural difference. [The applicant] describes confrontational relationships with her hierarchical superiors who have apparently cast doubt on her ability to do her job. In her account, it should be noted that [the applicant] has a tendency to interpret events in a paranoid manner. The assumption of a fragile personality disorder can be made.'

35 The medical opinion of 18 August 2009 was communicated to the applicant who, by letter from her advisers of 26 August 2009, asked the appointing authority, in particular in the light of that opinion, to suspend the operation of the contested decision pending further medical examinations. That request was rejected by decision of the appointing authority of 2 September 2009.

36 On 1 October 2009, pursuant to Article 90(2) of the Staff Regulations, the applicant submitted a complaint against the contested decision.

Procedure and forms of order sought

37 By application for interim measures lodged at the Registry of the Tribunal on 6 November 2009 and registered as Case F-92/09 R, the applicant sought, on the one hand, the suspension of the contested decision and, on the other, the grant of provisional measures.

38 By letter of 19 November 2009, the Registry informed the parties of the decision taken by the Tribunal to grant the applicant's request for anonymity.

39 By order of 18 December 2009 in Case F-92/09 R *U* v *Parliament* [2009] ECR-SC I-A-1-511 and II-A-1-2771, the President of the Tribunal ordered the suspension of operation of the contested decision pending the Tribunal's final decision.

40 Granting the appeal brought by the Parliament, the President of the General Court of the European Union, by order of 27 April 2010 in Case T-103/10 P(R) *Parliament* v *U*, annulled the order of the President of the Tribunal cited above, on the ground that the latter had wrongly held that the condition relating to urgency was satisfied in this case and, ruling on the dispute himself, dismissed the application for interim measures.

41 In accordance with Article 91(4) of the Staff Regulations, the proceedings in the main action were stayed pending the decision of 5 February 2010, notified on the same day, by which the appointing authority rejected the complaint

42 The applicant claims that the Tribunal should:

— annul the contested decision;

— order the Parliament to pay damages to compensate for the non-material harm, estimated subject to all proper reservations at EUR 15 000;

— order the Parliament to pay the costs.

43 The Parliament contends that the Tribunal should::

— dismiss the action as unfounded;

— order the applicant to pay all of the costs.

Law

44 In support of her action, the applicant puts forward three pleas, the first alleging breach of the duty to have regard for the welfare of officials, provided for in Article 24 of the Staff Regulations and in Article 8 of the Internal Rules, the second alleging infringement of Article 59(5) of the Staff Regulations and the third alleging infringement of Article 12(2) of the Internal Rules.

The first plea, alleging breach of the duty to have regard for the welfare of officials, provided for in Article 24 of the Staff Regulations and in Article 8 of the Internal Rules

Arguments of the parties

45 The applicant observes that, as from 2006, she began to have problems of communication with her colleagues, even though, at that time, her professional performance continued to be adequate. In 2007, the remedial procedure was initiated with regard to her. Even though she agrees that, at the time of the initiation of that procedure, her Head of Unit was not in a position to take the view that the professional inadequacies observed were due to reasons of a medical nature, some very clear indications to that effect became apparent after her transfer to Unit 'X'. The applicant relies, in that regard, on the record of the meeting held on 5 November 2008 between her Head of Unit and an administrator of the Unit.

46 The applicant acknowledges that she was reluctant to accept the existence of problems of a psychological nature and refused all help. However, it is very difficult for a person suffering from a personality disorder, such as that diagnosed by the psychiatrist consulted by the Parliament's medical service, to acknowledge the existence of a pathology, since the behaviours associated with it are regarded by the person concerned as natural and inevitable.

47 However, in spite of that, the first assessor proposed her dismissal. The applicant adds that the eventuality that the professional difficulties which she was encountering may have had a medical origin was emphasised by the Committee in its opinion and that the Committee specifically asked the administration to verify whether such was indeed the case.

48 The applicant observes that, under Article 24 of the Staff Regulations, the administration has a duty to have regard to the welfare of its staff. According to settled case-law, by virtue of that duty and of the principle of sound administration, the administration must, when giving a decision concerning an official's situation, take account of all matters capable of affecting its decision and, in so doing, it must take account not only of the interests of the service but also of those of the official concerned. When a decision as serious as that of a dismissal for incompetence is involved, the duty incumbent on the administration to have regard for the welfare of the official is heightened.

49 By deciding, in this case, not to inform the Parliament's medical service immediately of the applicant's suspected problems of a psychological nature after her transfer to Unit 'X', the assessor acted in breach of the duty to have regard for the welfare of officials, provided for in Article 24 of the Staff Regulations and in Article 8, and especially Article 8(5), of the Internal Rules. Even if she did not wish to acknowledge the existence of those problems, or to cooperate, the onus was on the administration, when faced with doubt regarding the possible medical origin of the difficulties which she was encountering in the performance of her duties, to close or at least suspend the incompetence procedure and to ask the medical service for further investigations. The psychiatrist consulted by the medical service diagnosed, in his opinion, a 'fragile personality disorder', which should, *a fortiori*, have led the administration to proceed in that way.

50 By letter of 27 April 2010, the applicant sent to the Tribunal Registry the report of Dr H., a psychiatrist, who, after questioning and examining the applicant on 21 April 2010, concluded that a characteristic personality disorder was present and that there was a suspicion of decompensation towards a more manifest psychosis. The applicant justified the lateness of this new submission of evidence by the fact that Dr H., with whom an appointment was sought in January 2010, had nothing available until 21 April 2010.

51 The Parliament contends, as a preliminary point, that the reference to Article 24 of Staff Regulations is irrelevant in this case, since that provision does not concern the duty of the institutions to have regard for the welfare of officials, but their duty to provide assistance. The Parliament submits that, as a consequence, it is required to reply only to the applicant's arguments relating to the alleged infringement of Article 8 of the Internal Rules.

52 In that regard, the Parliament observes that the deterioration of the applicant's performance, due inter alia to her lack of motivation and of willingness to accomplish correctly the tasks entrusted to her, began to manifest itself after her establishment.

53 The welfare officer, who, at the request of the human resources officer of DG Translation and Publication, went to the applicant's place of work in September 2008, did not observe any particular anomalies. Moreover, the applicant did not respond positively or constructively to the offer of help purportedly made to her by the welfare officer.

54 Likewise, the Parliament's medical officer, whom the applicant finally went to see on 20 November 2008, did not find any anomalies from a medical point of view and sent her to the welfare officer.

55 The Parliament points out that, despite all those efforts on the part of the institution to help her, the applicant still complained that her superiors did not understand her mentality. The Parliament adds that she was not at ease in a multicultural and international environment and that she had on several occasions manifested a certain contempt for the Parliament, the Union and her work, even going so far as to express the intention of resigning from her post.

56 The Parliament submits that Article 8 of the Internal Rules was correctly applied in this case. At the time of initiating the remedial procedure, that is to say, during the initial interview provided for in Article 7 of the Internal Rules, which took place on 9 July 2007, the final assessor concluded that it was not necessary to seek information from the medical service, since he had not observed in the applicant any signs of incompetence which may have been due to reasons of a medical nature. Moreover, the applicant herself did not mention the existence of such reasons. The final assessor therefore acted in full accordance with Article 8(1) of the Internal Rules.

57 Moreover, the psychiatrist consulted by the medical service in August 2009 clearly concluded, after examining the applicant, that there was no mental confusion at all. In those circumstances, such a diagnosis by no means precluded the administration from rightly considering that the applicant's professional inadequacies did not have a medical origin. In any event, that doctor's report did not establish the existence of a link between the personality disorder which he observed in the applicant and her professional inadequacies. The Parliament submits that it is entitled to infer from this that, even with the personality disorder diagnosed, the applicant was able to perform her work correctly.

58 The Parliament adds that the errors made by the applicant in the performance of her duties were of a gravity and frequency such that they were impeding the proper operation of the Unit. Her offensive conduct within the Unit and, in particular, her categorical refusal to work with colleagues of a certain nationality or ethnic origin made any collaboration impossible.

59 The Parliament disputes the interpretation placed on the record of the meeting of 5 November 2008, mentioned in paragraph 24 above. It was only suggested, during that meeting, that the applicant's work and behaviour in the Unit should be monitored very closely, and that note should be taken of any detail which might help the final assessor in his decision-making on the applicant's professional future. It was also noted that every possible effort had been made to offer the applicant psychological help if needed but that she had always denied having psychological problems and had refused all help. According to the Parliament, it is not at all evident from the record of that meeting that it was

maintained on that occasion that reasons of a medical nature might be at the root of the professional difficulties encountered by the applicant since her establishment and that she 'needed psychological help'.

60 The Parliament expresses doubts regarding the applicant's assertion that she was reluctant to acknowledge that she had problems of a psychological nature, since, according to the Parliament's medical officer, she was following a course of treatment from a psychiatrist, so that she was bound to be aware of the fact that she had problems of a psychological nature which she could have mentioned during the remedial procedure.

61 Finally, the Parliament disputes the relevance of the Committee's opinion. The Parliament points out that the Committee is not composed of doctors and that its opinion was delivered on 14 May 2009. However, in May 2009, the appointing authority was able to act on the basis of the conclusions of the Parliament's medical officer set out a few months previously, in November 2008, after the applicant had been examined at that same time, and according to which there were no anomalies from a medical point of view.

Findings of the Tribunal

62 The applicant maintains in essence that, by continuing the procedure for dealing with incompetence until the adoption of contested decision, even though a number of signs made it possible to detect, throughout that procedure, that her professional problems might be of medical origin, the Parliament failed to comply with the duty to have regard for the welfare of officials, provided for in Article 24 of the Staff Regulations and in Article 8 of Internal Rules. The applicant points out that the duty to have regard for the welfare of officials imposes on the administration, in the case of officials in respect of whom signs of psychological disorders have been detected, a positive obligation to contact a doctor.

63 In that regard, the first plea raised by the applicant must be construed as essentially alleging a breach of the duty to have regard for the welfare of officials, as specifically embodied inter alia in Article 8 of the Internal Rules, without it being necessarily appropriate to consider the question of the scope of the obligation to provide assistance under Article 24 of the Staff Regulations themselves.

64 It must be recalled, as a preliminary point, that the administration's duty to have regard to the welfare of officials, as expounded in the case-law, reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants. A particular consequence of this balance is that when the authority takes a decision concerning the situation of an official it should take into consideration all the factors which may affect its decision and that, in so doing, it should take into account not only the interests of the service but also those of the individual concerned (Joined Cases 33/79 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, paragraph 22, and Case C-298/93 P *Klinke* v *Court of Justice* [1994] ECR I-3009, paragraph 38).

65 The duty to have regard for the welfare of officials requires the administration, where there is doubt as to the medical origin of the difficulties encountered by an official in performing the tasks falling to him or her, to take all necessary steps to dispel that doubt before a decision dismissing that official is adopted (see, by analogy, Case T-145/01 *Latino* v *Commission* [2003] ECR-SC I-A-59 and II-337, paragraph 93).

66 That requirement is reflected in the Internal Rules themselves, since Article 8 of those Rules provides that the final assessor must, in certain circumstances, refer the matter to the Parliament's medical service if he is aware of facts likely to show that the conduct alleged against the official could have a medical origin.

67 Moreover, the obligations imposed on the administration by the duty to have regard for the welfare of officials are substantially reinforced when what is at issue is the particular situation of an official in respect of whom there are doubts regarding his or her mental health (see, to that effect, Case F-17/05 *de Brito Sequeira Carvalho* v *Commission* [2006] ECR-SC I-A-1-149 and II-A-1-577, paragraph 72). That is true *a fortiori* when, as in this case, the official concerned is under threat of dismissal and therefore in a vulnerable position.

68 In this case, it is apparent from the record of the meeting of 5 November 2008 relating to the applicant's integration within Unit 'X', and of which the Head of Office and the Director-General were addressees, that the applicant was showing goodwill, but that she was encountering problems of communication with her colleagues, that she was isolated within the Unit due to her behaviour and that the Head of the Unit in question feared that that behaviour would damage, in the long term, the atmosphere within the Unit. That record also stated that every effort had been made to offer the applicant psychological help — from a doctor or a social worker — if need be, but that she had denied having problems and had declined all help.

69 Moreover, the Committee was consulted on the proposal to dismiss the applicant. In the opinion which it delivered on 14 May 2009, the Committee concluded that the applicant was not in a position to perform satisfactorily the professional tasks which were being assigned to her and to work within a multicultural environment such as that of the Parliament. It also concluded that the administration should seek to determine whether the applicant's professional unsuitability was due to medical reasons. Finally, it approved the proposal to dismiss in so far as it was demonstrated that the applicant's occupational unsuitability was not due to medical reasons or in so far as the applicant refused to undergo the medical examinations necessary in order to refute the medical origin of her professional difficulties.

70 It is to be noted that a large part of the content of the opinion is devoted to the question of the possible link between the applicant's professional difficulties and her state of mental health.

71 Thus, the Committee pointed out in the opinion that a number of people who had worked with the applicant had informed her that they had doubts regarding her mental state, and the Committee itself had the distinct impression, on hearing the applicant, that she was in an unstable or disturbed mental state.

72 The Committee also stated in the opinion that the hearings which it had conducted revealed that the applicant's hierarchical superiors had a convergent opinion of her, namely, that she had, shortly after her establishment, begun to manifest unusual behaviour including, inter alia, periodic bouts of antisocial attitude towards her colleagues, a refusal to take responsibility for the tasks falling to her, and this for no obvious reason or for eccentric reasons, or else inappropriate bursts of laughter.

73 Moreover, the Committee's opinion highlighted a number of facts: DG Translation and Publication had contacted the Parliament's medical service in August 2008 and the latter had offered the applicant an appointment in order to examine the 'signs of possible depression' which it had already detected in December 2006, but she had not responded to that invitation; DG Translation and Publication had then asked the Parliament's welfare service to intervene, but the latter had met with a refusal from the applicant. It is also apparent from the file that some psychological assistance from, inter alia, a doctor had been offered to the applicant when she was working in Unit 'X' at the end of 2008, but she had refused all help.

74 Admittedly, it is for the administration to ensure that officials or other staff do not rely unreasonably or fraudulently on the rights which they derive from the Staff Regulations, in particular, in respect of insurance against the risk of invalidity.

75 However, in the light of the foregoing, it must be concluded that the administration had at its disposal from the end of 2008 and, at the very least, in May 2009 when the Committee delivered the opinion, sufficient information to give grounds for believing that the conduct alleged against the applicant might be due to reasons of a medical nature. In such circumstances, the onus was on it, before adopting the contested decision, to take all necessary steps to satisfy itself that that was not the case.

76 The Parliament merely asserts, in its defence, that, at the time when the contested decision was adopted, the administration had at its disposal information giving it grounds for the view that the applicant's professional difficulties did not have a medical origin.

77 At the very most, the Parliament relies on the assessment of its welfare officer, after the visit made in September 2008 to the applicant's place of work, and on that of its medical officer who, during the visit on 20 November 2008, found no anomalies of a medical nature.

78 However, the assessment of a welfare officer, who does not have the necessary medical qualifications, cannot give grounds for the administration to dismiss all doubt concerning the medical origin of professional difficulties encountered by one of its staff.

79 As regards the 'examination' carried out by the Parliament's medical officer on 20 November 2008, the only document produced for the file relating to that 'examination' is an email of 27 October 2009 which states:

'I had that interview with [the applicant] in the presence of the welfare officer in order to widen the investigation to include the welfare aspects which [the applicant] might encounter. Nothing in particular occurred during the interview.'

80 It does not appear from that email that the Parliament's medical officer, who in any case is not a psychiatrist, put forward a diagnosis following the interview, or that he drew any conclusions, as a result of that interview, concerning a possible medical origin of the professional difficulties encountered by the applicant; indeed, the medical officer confines himself to mentioning the fact that the interview took place and that there were no incidents on that occasion.

81 The evidence relied on by the Parliament does not, therefore, appear sufficiently convincing.

82 Above all, the Parliament does not mention any action which the administration took between the time when it acquainted itself with the Committee's opinion and the adoption of the contested decision.

83 However, some action to determine whether the applicant's professional difficulties were of medical origin was particularly called for at that stage of the procedure since it was recommended by the Committee and since the latter, which had been able to examine thoroughly the applicant's situation, expressly mentioned the possibility of a link between her professional difficulties and her mental health.

84 Moreover, in the light of the opinion, the fact of the applicant's repeatedly declining any offer of help could reasonably be interpreted in the present case by the administration as a possible refusal on the part of the applicant to contemplate the eventuality that she was suffering from mental illness and therefore as a sign that she was not capable, on account of her health, of defending her own interests adequately. The fact that she was being monitored by a psychiatrist, far from proving that she was able to recognise the existence of her mental illness, was instead such as to warrant the Parliament's displaying more caution.

85 As was stated above, when an official is not capable of acting on his or her own behalf and of perceiving the very existence of his or her illness, that situation may, where appropriate, imply a positive obligation on the part of the institution, *a fortiori* when, as in this case, the official in

question is under threat of a dismissal and therefore in a vulnerable position. Consequently, in that particular context, the onus was on the administration to insist on the applicant's agreeing to undergo a further medical examination, in particular relying on the right of the institution to have the official examined by the medical officer, pursuant to Article 59(5) of the Staff Regulations, under which an official may be required to take leave when his or her state of health so requires.

86 The Parliament does not prove or even claim that, in the particular context referred to in the previous paragraph, specific efforts were made — after it had acquainted itself the Committee's opinion — to persuade the applicant to have herself examined by a doctor. The contested decision is moreover silent in that regard, notwithstanding the opinion, and contains no reasons justifying the absence of any investigation of a medical nature.

87 That failure to take appropriate steps with regard to the applicant is all the more inexplicable since, even though the contested decision had already been taken, the Parliament, through its medical service, did not hesitate, in August 2009, after the applicant went to see that service, to ask a psychiatrist to examine her. That decision of the Parliament, taken barely a month after the contested decision, confirms the pre-existing need to have the applicant examined by a specialist doctor and, accordingly, demonstrates the omissions in the procedure which led to the dismissal at issue.

88 Such a medical examination of the applicant should have taken place before the adoption of the proposed decision to dismiss, which could, in some circumstances, have been justified if the doctor thus consulted had actually ruled out any possible medical reason for the conduct alleged against the applicant.

89 In the light of all the foregoing and without there being any need to rule on the admissibility of the evidence submitted by the applicant on 27 April 2010, it must be held that the Parliament did not take all necessary steps to dispel the doubt which existed as to the medical origin of the applicant's professional difficulties, and that it thereby failed to comply with the duty to have regard for the welfare of officials and, consequently, with Article 8 of the Internal Rules.

90 Accordingly, and without there being any need to examine the other pleas put forward by the applicant, the first plea must be upheld and, in consequence, the contested decision must be annulled.

The damages claim

91 The applicant seeks payment of the sum of EUR 15 000 by way of compensation for the non-material harm which she considers herself to have suffered.

92 The Parliament points out that the applicant does not specify the nature of the damage which she claims to have sustained, and therefore regards her claim as inadmissible.

93 In the alternative, it submits that the applicant has not adduced proof of the unlawfulness of the conduct complained of.

94 In that regard, it is hardly disputable that the Parliament's unlawful conduct, established in paragraph 87 above, caused non-material harm to the applicant.

95 However, the annulment of an unlawful act, which operates *ab initio*, may in itself constitute appropriate and, in principle, sufficient reparation for any non-material harm which that act may have caused (Joined Cases 44/85, 77/85, 294/85 and 295/85 *Hochbaum and Rawes* v *Commission* [1987] ECR 3259, paragraph 22; Case T-116/03 *Montalto* v *Council* [2004] ECR-SC I-A-339 and II-1541, paragraph 127; Case T-10/02 *Girardot* v *Commission* [2006] ECR-SC I-A-2-129 and II-A-2-609, paragraph 131; and Case F-6/07 *Suvikas* v *Council* [2008] ECR-SC I-A-1-151 and II-A-1-819,

paragraph 151), unless the applicant demonstrates that she suffered non-material harm separable from the unlawfulness justifying the annulment and incapable of being entirely remedied by that annulment (see, to that effect, Case C-343/87 *Culin* v *Commission* [1990] ECR I-225, paragraphs 27 and 28).

96 In this case, the applicant may have experienced feelings of injustice, frustration or insecurity, but that harm has been remedied appropriately and sufficiently by the annulment of the contested decision in which its cause lay.

97 The damages claim must therefore be rejected.

Costs

98 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Title 2, Chapter 8 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), 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.

99 It follows from the grounds of this judgment that the Parliament is the unsuccessful party in all essential respects. In addition, in her pleadings, the applicant has expressly asked for the Parliament to be ordered to pay the costs. Since the circumstances of this case do not justify the application of the provisions of Article 87(2) of the Rules of Procedure, the Parliament must be ordered to pay all the costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Second Chamber)

hereby:

1. Annuls the decision of the European Parliament of 6 July 2009 dismissing U;

2. Dismisses the action as to the remainder;

3. Orders the Parliament to pay all the costs.

Tagaras Van Raepenbusch Rofes i Pujol

Delivered in open court in Luxembourg on 28 October 2010.

W. Hakenberg
Registrar

H. Tagaras
President