Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

3 October 2019 *

(Civil service – Officials – Article 24 of the Staff Regulations – Request for assistance – Article 12a of the Staff Regulations – Psychological harassment – Scope of the duty of assistance – Removal measure – Duration of the administrative procedure – Liability – Non-material damage)

In Case T-730/18,

DQ, and the other applicants whose names appear in the annex, [1] represented by M. Casado García-Hirschfeld, lawyer,

applicants,

v

European Parliament, represented by E. Taneva and T. Lazian, acting as Agents,

defendant,

APPLICATION under Article 270 TFEU seeking compensation for the damage which the applicants claim to have suffered by reason, essentially, of the mishandling of a request for assistance which they made in respect of alleged acts of psychological harassment on the part of their hierarchical superior,

THE GENERAL COURT (First Chamber),

composed of V. Valančius, acting as President of the Chamber, P. Nihoul and J. Svenningsen (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

Judgment

I. Background to the dispute

1 The applicants, DQ and the other applicants whose names appear in the annex, are officials of the European Parliament assigned to the [*confidential*] [2] unit ('the unit') of the [*confidential*] directorate of the Directorate-General (DG) for [*confidential*] ('the Directorate-General').

* Language of the case: French.

1 The list of other applicants is annexed to the version served on the parties only.

2 Confidential data omitted.

2 In 2013, the applicants and two of their colleagues reported inappropriate behaviour on the part of the head of the unit ('the head of unit') to the director of the [*confidential*] directorate ('the director') and the Director-General of the Directorate-General ('the Director-General'), the hierarchical superiors of the head of unit.

3 More particularly, in a letter dated 11 November 2013 addressed to the Director-General ('the letter of 11 November 2013'), the applicants and two of their colleagues, expressing concern for their hierarchical superior's health and the cohesiveness and professionalism of the unit, asked for a language test which the head of unit was due to sit to be postponed. They indicated that the members of the test panel had been threatened by the head of unit over any possibility of failing the test. More specifically, the head of unit was said to have threatened to commit suicide or retaliate if he failed. The applicants and two of their colleagues also stated, in the letter of 11 November 2013, that one of the medical officers of the medical service had catalogued, in a note subsequently provided to the director, various acts of the head of unit which had been described in consistent terms by certain members of staff when, during the course of October 2013, they had attended the medical service. The applicants thus expressed serious concern as to the professional and social conduct of the head of unit to the Director-General.

4 By email of 18 November 2013, the Director-General informed the applicants that he had asked the director, first, to investigate within the Directorate-General the matters they had reported to him, and, secondly, to inform the head of unit that the language test he had been due to sit had been postponed.

5 By email of 5 December 2013, the applicants asked the director to stop questioning the members of the unit individually and to treat them as having acted collectively, such that it was appropriate to meet them as a group. In response, the director explained that, in his experience, members of the unit were more likely to speak frankly in a private conversation than in a group meeting, and that this was why he had preferred to hold individual meetings. Stating that, as a result of the individual meetings he had held, he now had an accurate picture of the situation, he indicated to the applicants – expressing regret that he had not been informed of the interpersonal difficulties within the unit sooner – that a meeting with all unit staff would be premature, and that he did not intend to call such a meeting until the atmosphere was more conducive.

A. The request for assistance and the measures adopted by the appointing authority

6 On 24 January 2014, through a lawyer, the applicants and two of their other colleagues made, in the context of Article 90(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), a request for assistance within the meaning of Article 24 of those regulations concerning allegations of psychological and sexual harassment by the head of unit contrary to Article 12a of the Staff Regulations ('the request for assistance'). This was addressed to the Secretary-General of the Parliament, who, along with the Director-General of the DG for Personnel, is the person responsible, within that institution, for dealing with such requests for assistance.

7 In their request for assistance, the applicants and two of their other colleagues asked the Secretary-General to suspend the head of unit from his duties pursuant to Article 23 of Annex IX to the Staff Regulations, with immediate effect; to suspend the appraisal exercise relating to their professional performance in 2013 ('the 2014 appraisal exercise'); to open an administrative inquiry and to pay their adviser's costs.

8 On 28 January 2014, the applicants and two of their other colleagues contacted the Director for Administrative Management of Personnel of the European Parliament expressing concern about a departmental meeting scheduled to take place the following day, with the head of unit present, in the

light of the fact that the request for assistance had been made. By email of the same date, they were informed that two people 'sent by the Directorate-General' would be attending the departmental meeting.

9 In that regard, the applicants say that they were surprised to discover that those two people were the director, who had been referred to by name in the request for assistance, and the legal adviser to the Director-General, who had also been referred to in the request.

10 According to the applicants, at the meeting of 29 January 2014 the director praised the head of unit's work and, after the head of unit had left the meeting, referred to the fact that the request for assistance had been made, stating that he was unaware of its contents and asking the applicants to speak to him openly about it, saying: 'Open your hearts and tell me what is on your liver'. He is also said to have suggested that the applicants should approach the advisory committee on harassment at the workplace. The applicants say that they asked the director whether the meeting was an official meeting, because if so they would have asked for their adviser, who was outside the room, to be present. The director is said to have replied that it was an internal meeting and therefore that the adviser could not attend. In the application, the applicants state that they perceived this meeting with the director as a further attempt at intimidation, an unfair attempt to test their cohesiveness and an attack on their human dignity.

11 By letter of 10 February 2014, the applicants' adviser complained about the handling of the request for assistance, making reference to the meeting of 29 January 2014, during which, he said, the director had made inappropriate remarks, and also to a meeting which had taken place two days later between the head of unit and one of the members of the language test panel. Against that background, he reiterated the importance of opening an administrative inquiry and taking preventative measures as soon as possible.

12 By letter of 17 February 2014, the Director-General of DG Personnel informed the applicants of interim measures that the appointing authority had already taken in response to the request for assistance. Thus, the appointing authority had (i) decided to reassign the management of the unit to the head of another unit, (ii) announced that it would designate another person to replace of the head of unit as first reporting officer in relation to the 2014 appraisal exercise, and (iii) that it would open an administrative inquiry as soon as possible.

13 On 4 March 2014, the director informed the applicants that the Secretary-General had decided to designate him as first reporting officer, with another director performing the function of appeal assessor.

14 On 11 April 2014, the applicants were informed that an administrative inquiry into the unit had been opened and that they were to attend a hearing scheduled for 15 April.

15 On 21 May 2014, the applicants submitted a complaint, pursuant to Article 90(2) of the Staff Regulations, against the appointing authority's decision to designate the director as their first reporting officer in respect of the 2014 appraisal exercise, also requesting the suspension of that appraisal exercise, the suspension of the head of unit from his duties, and the adoption of measures to ensure their safety in the workplace and to ensure that the request for assessment was dealt with confidentially.

16 By an application lodged at the Registry of the European Union Civil Service Tribunal on 22 May 2014 and registered under number F-49/14, the applicants and two of their other colleagues asked that tribunal, inter alia, to annul the appointing authority's decision to designate the director as their first reporting officer, to suspend the 2014 appraisal exercise and to suspend the head of unit from his duties.

17 By order of 12 June 2014, *DQ and Others* v *Parliament* (F-49/14 R, EU:F:2014:159), the President of the Civil Service Tribunal rejected an application for interim measures which had been made in a separate document by the applicants and two of their other colleagues.

18 On 2 June 2014, the Parliament informed the applicants of its definitive conclusions as regards the request for assistance. It had reached three such conclusions, namely (i) that measures had been taken to remove the head of unit, with the management of unit staff being transferred to another head of unit, (ii) that the head of unit had been replaced, by the director, as the applicants' first reporting officer in respect of the 2014 appraisal exercise, and (iii) that a disciplinary investigation had been opened with regard to the head of unit, pursuant to Article 86 of the Staff Regulations.

19 By note of 3 June 2014, the Secretary-General of the Parliament informed the Director-General that he had noted that it was becoming complicated to conduct the 2014 appraisal exercise in accordance with the principle of sound administration, and that he had accordingly decided to suspend that appraisal exercise, provisionally, as regards the whole unit, until a balanced solution could be found, and more specifically until the appointing authority was in a position to make its determinations with the necessary composure.

20 On 26 September 2014, the Secretary-General, in his capacity as appointing authority, rejected the complaint of 21 May 2014 as being partly premature, in so far as it concerned interim measures on the part of the appointing authority, and partly unfounded.

21 By a letter which reached the Registry of the Civil Service Tribunal on 20 November 2014, the applicants and one of their two other colleagues indicated to that tribunal that they were withdrawing their action in Case F-49/14, principally because the Parliament had agreed, inter alia, to take 'interim measures, as notified in [its] notes of 2 and 3 June 2014'.

22 By order of 12 January 2015, *DQ and Others* v *Parliament* (F-49/14, EU:F:2015:1), the Civil Service Tribunal removed Case F-49/14 from its register, while ordering the Parliament to bear its own costs and to pay those of the applicants and their two other colleagues, essentially on the ground that, as the Parliament had not taken specific, targeted measures to suspend the head of unit and/or the 2014 appraisal exercise, they had had no choice but to bring that action, together with an application for interim measures, in order to protect their rights and to press the appointing authority into action with regard to the psychological and sexual harassment they claimed to have suffered.

23 According to the applicants, in October 2015 the appointing authority, having concluded the administrative inquiry, drew up a report – which was not communicated to them – in which it found that the head of unit had engaged in conduct constituting harassment within the meaning of Article 12a of the Staff Regulations.

B. Responsibility for the costs, fees and disbursements of the applicants' adviser in relation to the request for assistance

24 On 2 December 2015, the applicants and one of their two colleagues reiterated, pursuant to Article 90(1) of the Staff Regulations, their request for the appointing authority to pay the entirety of their advisers' costs, disbursements and fees.

25 By decision of 2 February 2016, the appointing authority rejected that request. A complaint lodged by the applicants and one of their two colleagues on 4 May 2016 was also rejected, by decision of 1 September 2016.

26 By an application which reached the Registry of the Court on 20 January 2017 and was registered under number T-38/17, the applicants and one of their two other colleagues asked the General Court to order the Parliament to pay the amount of EUR 92 200 by way of compensation for the material damage they had suffered, that amount corresponding to the entirety of their adviser's costs, fees and disbursements in relation to (i) the request for assistance, (ii) proceedings which they had brought against the Parliament before the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium), and (iii) the action in Case T-38/17.

27 A defence was lodged on 12 April 2017, after which, by decision of 18 May 2017 the General Court (First Chamber) directed the Judge-Rapporteur to examine the possibilities of an amicable settlement of the dispute, in accordance with Article 50a of the Statute of the Court of Justice of the European Union and Article 125a(3) of the Rules of Procedure of the General Court.

28 In response to a proposal from the Judge-Rapporteur to proceed to an amicable settlement on the basis of a draft settlement agreement, the Parliament indicated, by letter of 1 June 2017, that it was minded to enter into negotiations with the applicants and one of their two other colleagues, who, by letter of 2 June 2017, indicated that they did not wish to settle the dispute amicably.

29 By letter of 7 June 2017, the Judge-Rapporteur invited the applicants and one of their two other colleagues to reconsider their position and to confirm, if it remained the case, that they did not wish to continue with the amicable settlement procedure. The Judge-Rapporteur drew their attention to the fact that, if the proceedings continued in Court, it would be necessary to consider the admissibility of the action in the light of the case-law, in particular the order of 20 March 2014, *Michel* v *Commission* (F-44/13, EU:F:2014:40, paragraph 45 and the case-law cited), given that they had asked the appointing authority to reimburse the lawyers' fees incurred in relation to the request for assistance on two previous occasions – once in the request for assistance of 24 January 2014, and again in a letter of 6 October 2014 – and it did not appear from the file that they had challenged, by way of an objection, the implicit rejection of those requests which had occurred on expiry of the prescribed period for the appointing authority to respond, which was four months.

30 By letter of 15 June 2017, the applicants and one of their two other colleagues informed the Court that, ultimately, they had made contact with the Parliament, and that, against that background, they sought an extension to the period for responding, which had already been extended to 21 July 2017 at the request of the Parliament. By letters of 11 and 6 July 2017, respectively, the applicants and one of their two other colleagues informed the Court that they had reached an agreement for the amicable settlement of the dispute, and the matter was accordingly removed from the Register of the General Court by order of 17 July 2017, *DQ and Others* v *Parliament* (T-38/17, not published, EU:T:2017:557). That agreement was, however, concluded without prejudice to any further claims for compensation, distinct from those at issue in Case T-38/17.

C. The claim for compensation in the present case

31 On 13 December 2017, the applicants requested compensation from the appointing authority pursuant to Article 90(1) of the Staff Regulations, to be assessed *ex aequo et bono* in the amount of EUR 192 000, in respect of the non-material damage they claimed to have suffered by reason of failings of the appointing authority in dealing with their request for assistance, particularly its failure to have due regard to the principle of sound administration or the duty of concern for the welfare of officials, and its failure to respect their dignity or their right to working conditions conducive to their health, safety and dignity.

32 The appointing authority did not accede to that request for compensation and, on 23 May 2018, the applicants lodged an objection against the implicit rejection of that request, of 13 April 2018.

33 By decision of 12 September 2018, the Secretary-General, in his capacity as appointing authority, rejected the objection of 23 May 2018 as unfounded, referring to the measures of assistance which the appointing authority had adopted, in particular the suspension of the head of unit and the commencement, on 6 January 2016, of disciplinary proceedings against him which had led, after the matter had gone before the Disciplinary Board and, on 14 November 2016, the head of unit had been heard, to a disciplinary penalty. According to the appointing authority, those measures had restored the applicants to working conditions conducive to their health, safety and dignity. This, it was said, was demonstrated by the fact that there had been no incidents of psychological harassment after those measures of assistance had been adopted by the appointing authority, in the course of February 2014.

II. Procedure and forms of order sought

34 By application lodged at the Registry of the Court on 12 December 2018, the applicants brought the present action, in which they claim that the Court should:

– annul the implicit rejection of their request for compensation and, in so far as necessary, the decision of 12 September 2018 rejecting their objection of 23 May 2018;

– order the payment of compensation in respect of their non-material damage, assessed *ex aequo et bono* in the amount of EUR 192 000;

– order the Parliament 'to pay the compensatory and late-payment interest which has accrued in the interim';

– order the Parliament to pay the costs.

35 By separate document lodged on the same day, the applicants requested anonymity pursuant to Article 66 of the Rules of Procedure.

36 In its defence, lodged on 20 March 2019, the Parliament contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

37 By separate document lodged on the same day, the Parliament requested that certain information relating to third parties not be made public.

38 On 19 April 2019, the Court closed the written part of the procedure.

39 No request for a hearing having been made by the parties within three weeks after service of notification of the close of the written part of the procedure, the Court, considering that it had sufficient information available to it from the material in the file, decided, pursuant to Article 106(3) of the Rules of Procedure, to rule on the action without an oral part of the procedure.

40 By letter of 1 August 2019 from the Court Registry, the Parliament was asked, by way of a measure of organisation of procedure, to answer a number of questions, and it did so within the relevant time limits.

III. Law

A. The claim for annulment

41 While making a claim for damages, the applicants seek annulment of the implicit rejection of their request for compensation and, so far as necessary, the decision of 12 September 2018 rejecting their objection of 23 May 2018.

42 In this regard, it is settled case-law that a decision of an institution rejecting a request for compensation is an integral part of the preliminary administrative procedure which precedes an action to establish liability before the Court. The measure setting out the position adopted by the institution during the pre-litigation stage has the sole effect of allowing the party who has suffered damage to apply to the Court for compensation, and consequently, claims for annulment of such a decision cannot be assessed in isolation from the claims relating to compensation (judgments of 18 December 1997, *Gill* v *Commission*, T-90/95, EU:T:1997:211, paragraph 45; of 6 March 2001, *Ojha* v *Commission*, T-77/99, EU:T:2001:71, paragraph 68; and order of 25 March 2010, *Marcuccio* v *Commission*, F-102/08, EU:F:2010:21, paragraph 23).

43 Accordingly, it would not be appropriate to rule separately on the first head of claim.

B. The claim for damages

44 In support of their action, the applicants essentially argue that they suffered non-material damage as a result of the failure of the appointing authority to adopt appropriate measures, within an appropriate time frame, in response to their request for assistance, and to ensure that their working conditions complied with Article 31 of the Charter of Fundamental Rights of the European Union. The applicants submit that, as evidenced by the various incidents they describe in the application, the inaction of the appointing authority enabled the head of unit to cause injury to their dignity, character and physical and mental integrity. They submit, furthermore, that the appointing authority failed to conduct the administrative inquiry within a reasonable time, and that it did not conduct the disciplinary proceedings against the head of unit, and impose a disciplinary penalty on him, within an appropriate time frame. The applicants also allege that the head of unit infringed their right to medical confidentiality.

45 The applicants consequently seek compensation for their non-material damage, which they assess *ex aequo et bono* in the amount of EUR 192 000.

46 The Parliament submits that the claim for compensation should be dismissed as unfounded, contending that it took all reasonable measures from the time when the request for assistance was formally submitted by the applicants to the appointing authority. While it acknowledges that it did not always go as far, in dealing with the situation, as might have been necessary, it emphasises that after he had been removed in response to the request for assistance, the head of unit had had only occasional contact with unit officials, and there had only been isolated instances when it had fallen to him to make decisions affecting the unit. The Parliament submits that these isolated and peripheral incidents cannot render it liable, particularly having regard to the broad discretion enjoyed by the appointing authority in formulating measures of assistance. As regards the duration of the administrative inquiry and of the disciplinary proceedings brought against the head of unit, the Parliament explains that the administrative inquiry concerned a large number of people and that the head of unit refused, in spite of the abundant documentation assembled in the course of the enquiries, to accept the measures and penalties imposed on him, while the appointing authority was obliged to ensure respect for the fundamental and procedural rights which, as an accused person, he enjoyed. The Parliament also emphasises that the head of unit brought an action before the Court

challenging the disciplinary penalty which had been imposed on him, namely the action giving rise to the judgment of 20 September 2019, *UZ* v *Parliament* (T-47/18, EU:T:2019:650), by which the Court annulled that penalty. It argues that, in any event, the applicants have not proved that they were subject to inappropriate conduct on the part of the head of unit after he had been reassigned.

1. Whether the appointing authority committed unlawful acts giving rise to liability on the part of the European Union

(a) General considerations

47 It should be recalled at the outset that, generally speaking, in order for liability to arise on the part of an institution, organ or body of the European Union, a number of conditions must be satisfied. Thus, the conduct of which the institution, organ or body is accused must be unlawful, actual damage must have been suffered, and there must be a causal link between the alleged conduct and the damage pleaded, those three conditions being cumulative (judgment of 10 April 2019, *AV* v *Commission*, T-303/18 RENV, not published, EU:T:2019:239, paragraph 104; see, also, judgment of 19 May 2015, *Brune* v *Commission*, F-59/14, EU:F:2015:50, paragraph 71 and the case-law cited).

48 In this regard, disputes involving the civil service under Article 270 TFEU and Articles 90 and 91 of the Staff Regulations, including those seeking compensation for damage caused to an official or other member of staff, are governed by particular and special rules that differ from those arising from the general principles on the non-contractual liability of the European Union under Article 268 TFEU and the second paragraph of Article 340 TFEU (judgment of 10 April 2019, *AV* v *Commission*, T-303/18 RENV, not published, EU:T:2019:239, paragraph 105).

49 It is clear from the Staff Regulations in particular that, unlike any other individual, an official or other member of European Union staff is connected to the institution, organ or body to which he or she belongs by a legal relationship of employment involving a balance of specific reciprocal rights and obligations, which is reflected in the employing institution's duty to have regard for the welfare of the person concerned (see judgment of 16 December 2010, *Commission* v *Petrilli*, T-143/09 P, EU:T:2010:531, paragraph 46 and the case-law cited, as confirmed by decision of 8 February 2011, *Review Commission* v *Petrilli*, C-17/11 RX, EU:C:2011:55, paragraphs 4 and 5).

50 Having regard to the fact that the European Union is thus under a greater liability where it acts as employer, a mere finding of unlawfulness against the appointing authority or the authority empowered to conclude contracts of employment (as the case may be), whether it relates to an act or to decision-making conduct, is sufficient to satisfy the first of the three conditions necessary to incur the liability of the European Union for damage caused to its officials and servants due to the infringement of the law governing the European Union civil service (judgments of 16 December 2010, *Commission* v *Petrilli*, T-143/09 P, EU:T:2010:531, paragraph 46, and of 12 July 2011, *Commission* v *Q*, T-80/09 P, EU:T:2011:347, paragraph 45), and there is consequently no need to consider whether it is a 'sufficiently serious' breach of a rule of law intended to confer rights on individuals (judgments of 14 June 2018, *Spagnolli and Others* v *Commission*, T-568/16 and T-599/16, EU:T:2018:347, paragraph 196, and of 6 May 2019, *Mauritsch* v *INEA*, T-271/18, not published, EU:T:2019:286, paragraph 42).

51 As regards the circumstances in which a finding of unlawfulness can be made, the discretion enjoyed by the administration must be taken into account. Hence, if the administration is required, under the legislation in force, under general principles or fundamental rights, or indeed under rules it has imposed on itself, to adopt a particular form of conduct, the simple failure to fulfil that obligation is such as to give rise to liability on the part of the institution concerned. By contrast, where it has a wide discretion, and in particular where the applicable legal framework does not require it to act in a

predetermined manner, only a manifest error of assessment constitutes unlawfulness (see judgment of 13 December 2017, *CJ* v *ECDC*, T-703/16 RENV, not published, EU:T:2017:892, paragraph 31 and the case-law cited).

52 The objections raised by the applicants in connection with their claim for compensation must be examined in the light of those considerations.

53 In that regard, despite a lack of clarity in the application, the applicants must be understood to be raising, essentially, three issues in relation to the requirement for the action taken by the appointing authority to be unlawful, these being (i) the conduct of the head of unit in itself, (ii) the inappropriateness of the measures taken by the appointing authority in response to the request for assistance, and at an earlier stage, in response to the report they sought to make under Article 22a of the Staff Regulations by means, inter alia, of their letter of 11 November 2013, and (iii) the time taken – in their submission an unreasonable time – to conduct the administrative inquiry, and the subsequent lateness of the disciplinary proceedings brought against the head of unit.

54 The matters raised under those three headings should be considered in turn.

(b) The claim for compensation in respect of non-material damage suffered by the applicants as a result of the conduct of the head of unit in itself

55 As regards the claim for compensation in respect of the non-material damage suffered by the applicants as a result of the conduct of the head of unit, this must rejected at the outset as being premature, as it is not the case that the applicants had first brought an action for compensation before a national court, against the head of unit, which had been dismissed.

56 Under the first paragraph of Article 24 of the Staff Regulations, the European Union is to 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'. Moreover, under the second paragraph of Article 24 of the Staff Regulations, the Union 'shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it'.

57 In that regard, the duty to provide assistance laid down in Article 24 of the Staff Regulations is concerned with the protection of officials and other members of staff, by their institution, against the acts of third parties, not against acts of the institution itself, the review of which falls under other provisions of the Staff Regulations (judgments of 17 December 1981, *Bellardi-Ricci and Others* v *Commission*, 178/80, EU:C:1981:310, paragraph 23, and of 9 September 2016, *De Esteban Alonso* v *Commission*, T-557/15 P, not published, EU:T:2016:456, paragraph 45). That being said, for the purposes of that provision, other officials or other members of staff or members of an EU institution, such as the head of unit, can be regarded as third parties (see, to that effect, judgment of 14 June 1979, *V.* v *Commission*, 18/78, EU:C:1979:154, paragraph 15).

58 Thus, under the second paragraph of Article 24 of the Staff Regulations, as regards the non-material damage which the applicants claim to have suffered as a result of the head of unit's conduct, they must, in the first instance, seek compensation for such damage by bringing an action for compensation before a national court, as it is clear that, pursuant to that provision of the Staff Regulations, it is only when such damage cannot be compensated for that the appointing authority can be required jointly and severally to pay compensation for the damage caused to the applicants by the conduct of a 'third party' for the purposes of that provision (see, to that effect, judgment of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 112).

59 Nonetheless, it should be noted that, in accordance with its duty to provide assistance, the appointing authority may be required to assist the applicants, inter alia financially, in seeking such compensation, in the present circumstances, with a view to obtaining, by means of 'assisted' legal action, a declaration that the conduct affecting them, by reason of their position or duties, and which justified the request for assistance, was unlawful and entitled them to the award of compensation by a national court (see, to that effect, judgments of 9 September 2016, *De Esteban Alonso* v *Commission*, T-557/15 P, not published, EU:T:2016:456, paragraph 42, and of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 113 and the case-law cited).

60 In the light of the foregoing, therefore, the claim for compensation concerning damage suffered by the applicants as a result of the conduct of the head of unit in itself must be rejected, including the claim alleging that the head of unit failed to have due regard to their right to have medical confidentiality preserved, which, moreover, had not been raised in the request for compensation.

(c) The claim for compensation relating to the inappropriateness of the measures of assistance which the appointing authority adopted in the present case

(1) The conduct of the appointing authority during 2013

61 The applicants' first objection is to the lack of action on the part of the appointing authority in dealing with the report under Article 22a of the Staff Regulations which they had sought to make through their letter of 11 November 2013, which had also referred to statements made by some of the applicants which had been recorded in their respective medical files and reproduced in a note produced by the medical service in October 2013. They submit that the appointing authority should have taken measures in 2013, to bring the head of unit's disregard for certain provisions of the Staff Regulations to an end.

62 In that respect, since psychological harassment is prohibited by Article 12a of the Staff Regulations, conduct of an official falling under that prohibition can be regarded as a 'serious failure to comply with the obligations of officials of the Union', and can thus be reported under Article 22a of the Staff Regulations, which provides that 'any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct' (see, to that effect, judgment of 8 October 2014, *Bermejo Garde* v *EESC*, T-530/12 P, EU:T:2014:860, paragraph 106).

63 On that point, the applicants rightly submit that the letter of 11 November 2013 ought to be regarded as a report under Article 22a of the Staff Regulations, and not as a request for assistance under Article 24. In that letter, as they themselves indicated in their subsequent request for assistance, the applicants, explaining that it was 'to avoid the test being conducted in an irregular manner and in compliance with their obligations under Article 2[2] of the Staff Regulations [that they were] informing [the Director-General] in writing', essentially requested a postponement of the language test, while also expressing concern as to the mental state of the head of unit and his conduct in the service. On the other hand, that letter did not refer, at least not expressly, to psychological or sexual harassment. The issues it raised related more, in essence, to difficulties within the unit, some giving rise to conflict, and to the head of unit's lack of regard for the basic principle that panels assessing the professional aptitudes of officials must be independent.

64 By deciding, a few days after receiving the letter of 11 November 2013, first, to instruct the director to conduct an enquiry, which was to be internal to the Directorate-General and relate to the matters reported to it by the applicants, and, secondly, by postponing the language test which the head of unit had been due to take, the appointing authority, in the person of the Director-General, acceded to the applicants' request as formulated, pursuant to Article 22a of the Staff Regulations, in that letter, even if the reply of 18 November 2013 gave no detail as to the nature and scope of the internal enquiry to be conducted within the Directorate-General.

65 In this regard, given that, in the exercise of the powers conferred on it, the administration may, for that purpose, supplying the appropriate logistical and human resources, decide to entrust the conducting of an administrative inquiry to the hierarchy of the institution, such as a director (see, by analogy, judgment of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraph 99 and the case-law cited), the applicants cannot criticise the appointing authority for the fact that the Director-General instructed the director to conduct the enquiry in relation to the report they had made, under Article 22a of the Staff Regulations, in their letter of 11 November 2013.

66 As regards the reference made by the applicants to statements recorded in their respective medical files, and in a note produced by one of the medical officers of the medical service, this is inoperative.

67 Within each institution, it is only the medical professionals making up the medical service, who are subject to the rules of professional ethics applicable to doctors, who can make medical diagnoses and communicate to the appointing authority the information it may require in order to exercise the powers conferred on it by the Staff Regulations and Conditions of Employment of Other Servants of the European Union (judgment of 10 April 2019, *AV* v *Commission*, T-303/18 RENV, not published, EU:T:2019:239, paragraph 109).

68 In that regard, it has not been established in the present case that the medical service itself informed the person empowered, within the Parliament, to deal with requests for assistance in the name of the appointing authority – that person being the Director-General of DG Personnel or the Secretary-General, as the case may be – of conduct on the part of the head of unit capable of falling within Article 12a of the Staff Regulations. At most, it is apparent from an email of 11 January 2014 that one of the applicants sent their adviser a copy of a note said to have come from the medical service, indicating that the director had also received a copy. The director was not, however, the person empowered within the Parliament to deal with requests for assistance under Article 24 of the Staff Regulations.

69 In those circumstances, up to the point when it received the letter of 11 November 2013, the appointing authority cannot be criticised for not having been aware of the existence or content of the statements which certain officials of the unit had made, during 2013, to the medical service, and which are said to have been recorded by the medical service in a note produced by the applicants.

70 As to the suggestion that the applicants sent the Director-General, along with their letter of 11 November 2013, a copy of the note from the medical service summarising the statements they had made to it, it must be observed once again that, for the purposes of taking action pursuant to Article 22a of the Staff Regulations, it was unquestionably the Director-General who, as the superior of the director and the head of unit, was the person empowered to involve the appointing authority. However, he was not the person empowered, on behalf of the appointing authority, to deal with a request for assistance under Article 24 of the Staff Regulations, concerning acts of psychological harassment within the meaning of Article 12a of those regulations.

71 Furthermore, leaving aside the fact that it is not stamped by the medical service, the document referred to by the applicants and produced as Annex A. 7 to the application merely confirms that they had attended consultations at the offices of the medical service of the Parliament.

72 That being so, it must be borne in mind that the opinions of medical experts are not such as to establish, in themselves, the existence in law of harassment or of the institution's negligence in the light of its duty to provide assistance (judgments of 6 February 2015, *BQ* v *Court of Auditors*, T-7/14 P, EU:T:2015:79, paragraph 49; of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraph 127; and of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraph 92). In particular, while the medical officers of the institution could have revealed that officials or other members of staff had had psychological problems, they could not have established that those problems resulted from psychological harassment, since, to make such a finding of harassment, the authors of the medical certificate would necessarily have had to rely exclusively on the description that the persons concerned made of their working conditions in the institution in question (see, to that effect, judgments of 29 June 2018, *HF* v *Parliament*, T-218/17, subject to appeal, EU:T:2018:393, paragraph 106; of 2 December 2008, *K* v *Parliament*, F-15/07, EU:F:2008:158, paragraph 41; and of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraph 127), and would not have been able to test that version of events against the version advanced by the person whose conduct was complained of by those officials or other members of staff.

73 The possibility certainly cannot be ruled out that, in certain circumstances, a head of department or the medical service of an institution could draw the appointing authority's attention to a potential case of patent or flagrant breach of Article 12a of the Staff Regulations, and that this could lead the appointing authority to open an administrative inquiry on its own initiative, without having received a request for assistance, together with prima facie evidence, from the alleged victim.

74 However, in the circumstances of the present case, the applicants not having addressed a formal request for assistance pursuant to Article 24 of the Staff Regulations, at the time, to the person or persons empowered, within the Parliament, to deal with requests for assistance, but having intended merely to make a report under Article 22a of the Staff Regulations, without referring to any breach of Article 12a thereof, cannot complain that, in 2013, the appointing authority did not open an administrative inquiry relating to acts of psychological harassment on its own initiative, or that it did not adopt measures to remove the head of unit at that time.

75 It must therefore be concluded that it was not contrary to Article 22a of the Staff Regulations, the duty to have regard for the welfare of officials, or the principle of sound administration, for the appointing authority not to adopt measures of assistance in favour of the applicants in 2013, to address the situation as it was in a position to understand it at the time.

76 As regards the applicants' allegation that the director failed to conduct the internal administrative inquiry which had been opened within the Directorate-General, in response to their report, to the full, in that he began by holding meetings with three people who were in the head of unit's circle of confidence and, it is said, would have been more malleable, in order to convince them that the matter arose out of machinations on the part of the applicants, it must be observed that this is not supported or proved and must, therefore, be regarded as speculative.

77 In any event, it must be borne in mind that the entity responsible for an administrative inquiry, which is required to investigate the files that are submitted to it in a proportionate manner, has broad discretion with regard to the conduct of the investigation and in particular with regard to assessing the quality and usefulness of the cooperation provided by the witnesses (judgments of 29 June 2018, *HF* v *Parliament*, T-218/17, subject to appeal, EU:T:2018:393, paragraph 97, and of 11 July 2013, *Tzirani* v *Commission*, F-46/11, EU:F:2013:115, paragraph 124). The choice as to the individuals who attended meetings with the director, as well as the decision taken by Director-General, in November 2013, to entrust the internal investigation to the director, fell within the appointing authority's broad discretion in the matter and, on this point, the applicants have not demonstrated that the appointing authority went beyond its powers.

78 Finally, the applicants have similarly not proved their allegation that the director did not 'duly conduct the investigation which the [appointing authority] had instructed him to conduct' in 2013.

79 In the light of the foregoing, the claims for compensation in respect of the conduct of the appointing authority, prior to submission of the request for assistance, must be rejected.

(2) The measures taken by the appointing authority after submission of the request for assistance

80 As regards the conduct of the appointing authority after the submission of the request for assistance, on 24 January 2014, it must be borne in mind that where a request for assistance within the meaning of Article 24 of the Staff Regulations is made to the appointing authority or, as the case may be, the authority empowered to conclude contracts of employment, pursuant to Article 90(1) of the Staff Regulations, that authority must, by virtue of the duty to provide assistance and when it is faced with an incident which is incompatible with the good order and tranquillity of the service, intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case so as to ascertain the facts and, having done so, to take the appropriate action in full knowledge of the matter. To that end, it is sufficient that the official or other staff member who is seeking the protection of his or her institution provide prima facie evidence that the attacks of which he or she claims to have been the victim actually took place. Where such evidence is provided, the institution concerned is under an obligation to take the necessary measures, in particular to conduct an administrative inquiry, with the cooperation of the complainant, to determine the facts which gave rise to the complaint (judgments of 26 January 1989, *Koutchoumoff* v *Commission*, 224/87, EU:C:1989:38, paragraphs 15 and 16, and of 25 October 2007, *Lo Giudice* v *Commission*, T-154/05, EU:T:2007:322, paragraph 136; see, also, judgment of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 46 and the case-law cited) and, in the light of the outcome of the inquiry, to adopt the necessary measures, such as the opening of disciplinary proceedings against the person concerned – as was done in the present case – where the administration concludes, on completion of the administrative inquiry, that psychological harassment has taken place.

81 In cases of allegations of harassment, the duty to provide assistance includes, in particular, the duty of the administration to examine seriously, expeditiously and in total confidentiality, the request for assistance in which the harassment is alleged and to inform the complainant of the action to be taken in respect of that complaint (judgments of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 47, and of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 98).

82 With regard to the measures to be taken in a situation which, as in the present case, is covered by Article 24 of the Staff Regulations, the administration enjoys a broad discretion – subject to review by the EU judicature – regarding the choice of measures and methods for implementing Article 24 of the Staff Regulations (see judgments of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 48 and the case-law cited, and of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 99 and the case-law cited), even though, as regards the issue of whether conduct does or does not amount to psychological harassment – a determination which can only be made at the conclusion of an administrative inquiry – it does not enjoy a broad discretion (judgments of 29 June 2018, *HF* v *Parliament*, T-218/17, subject to appeal, EU:T:2018:393, paragraph 123; of 13 July 2018, *SQ* v *EIB*, T-377/17, EU:T:2018:478, paragraph 99; and of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 75).

83 In the present case, the Parliament does not dispute that the request for assistance was accompanied by sufficient prima facie evidence in support of the allegations of psychological and sexual harassment which it contained.

84 Where the person requesting assistance supplies sufficient prima facie evidence in support of the allegations, the administration is required to open an administrative inquiry in order to ascertain the facts and, having done so, to be able to take such measures of assistance as may be appropriate (see, to that effect, judgment of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraph 94); it does not have a broad discretion as to whether it is appropriate to open and conduct such an administrative inquiry. The administration is also required to conduct the inquiry as expeditiously as possible so that, in due course, it is able to restore working conditions conducive to the interest of the service.

85 While, in the present case, the appointing authority did open an administrative inquiry in response to the request for assistance, it did not do so until 19 March 2014, and did not inform the applicants until April 2014, which was almost three months after the request had been made. It must be held that, in proceeding in that way, the appointing authority infringed the principle of sound administration as well as Article 24 of the Staff Regulations, while also leaving the applicants in doubt as to the action taken in response to their request.

86 With regard to the meeting of 29 January 2014, the applicants have not demonstrated, particularly having regard to the broad discretion allowed to the appointing authority in respect of the organisation of its departments, how the presence of the director and a legal adviser assigned to the Director-General infringed any applicable provision of the Staff Regulations. In particular, it must be borne in mind that the only person formally and directly accused in the request for assistance was the head of unit. Thus, in the absence of allegations against others, and even if, in the subjective view of the applicants, the director's loyalty was to the head of unit and he did not provide them, in 2013, with the assistance to which they were entitled under Article 24 of the Staff Regulations, the appointing authority did not in any way infringe that provision in arranging for the director and the legal adviser to be present at the meeting of 29 January 2014.

87 As to what the director is alleged to have said at that meeting of 29 January 2014, it should be noted that he was the immediate superior of the head of unit to whom the allegations in the request for assistance related, that at that stage, in the request for assistance, he had not been formally and directly accused himself, and that it was he (and not the appointing authority in the person of the Director-General of DG Personnel or, as the case might be, the Secretary-General) who had initially been approached by the applicants in 2013.

88 In those circumstances, the appointing authority was entitled to inform the director of the existence of the request for assistance, for purposes including seeking his help in dealing with the request. While it is undoubtedly preferable in principle, in order to protect both the alleged victim and the professional integrity of the alleged harasser, that, initially, the appointing authority does not inform the latter, or any third parties, of the submission of a request for assistance or of the identity of the person making the request, that does not include persons occupying positions within the hierarchy that are superior to those of the alleged harasser and the alleged victim. The essential point, in this respect, is that disclosure of the existence of the request for assistance must not undermine the effectiveness of the inquiry (judgment of 29 June 2018, *HF* v *Parliament*, T-218/17, subject to appeal, EU:T:2018:393, paragraph 165).

89 As regards the alleged hesitation of the appointing authority in releasing the head of unit from his duties, by reassigning him to a role in which he would no longer be in contact with the applicants, it must be held, given the seriousness of the matters alleged in this case, in particular the allegations of sexual harassment of one of the members of the unit, as well as the credibility of the evidence produced by the applicants – who, moreover, represented practically the entire unit – that the appointing authority was obliged, under Article 24 of the Staff Regulations, to adopt a measure completely removing the head of unit. However, as the Parliament submits, in adopting such a measure, the appointing authority was still obliged to observe the rights of the accused, in particular

his rights of defence and the presumption of innocence, bearing in mind that definitive measures of assistance are only to be adopted at the conclusion of the administrative inquiry (see, to that effect, judgment of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 57).

90 In the present case, while the appointing authority did reassign the head of unit to another post and appoint another head of unit to lead the unit and to conduct the 2014 appraisal exercise with regard to the applicants, it must be stated that on a practical level, as the Parliament itself has acknowledged, the head of unit continued to play a residual part in the work of the unit, particularly in managing leave and training and in relation to the 2014 appraisal exercise, even though, under Article 24 of the Staff Regulations, he ought to have been completely removed from the management of the unit for the entire duration of the administrative inquiry. Similarly, even if, pending the outcome of the administrative inquiry, no disciplinary penalty or equivalent administrative measure could be adopted, on the sole basis of the allegations made by the applicants, in respect of the head of unit, it was manifestly inappropriate for him to be assigned, for the duration of the administrative inquiry and the subsequent disciplinary proceedings, to a position, [*confidential*], in which he would have day-to-day contact with the applicants, who essentially made up the whole unit, and the opportunity to intimidate or threaten them.

91 In proceeding in that way, the appointing authority breached the obligation which was incumbent on it, under Article 24 of the Staff Regulations, to bring about an effective separation of the head of unit from the other members of the unit, with the result that working conditions compatible with the dignity of the applicants, within the meaning of Article 31 of the Charter of Fundamental Rights, were not fully restored.

92 As regards the conduct of the director, which was perceived by the applicants as partisan and favourable to the head of unit, it appears that, with the exception of A, the applicants did not seek to allege that the director had engaged in conduct falling within Article 12a of the Staff Regulations, and did not make a request for assistance with a view to the appointing authority protecting them from the conduct of the director of which they complain in this action.

93 With regard to A, it appears that, in addition to the request concerning the head of unit, that individual made a request to the appointing authority, on 23 January 2015, to the effect that the director should no longer be responsible for his appraisal exercise. In that request, A indicated that for four years he had been subject to abuses of power and psychological harassment from the director, which had affected his health. The request, which was classified by the appointing authority as a request for assistance, was rejected by a decision taken by that authority on 16 February 2015, on the ground that the Secretary-General had appointed the director as appeal assessor for the 2014 appraisal exercise in relation to all of the unit's staff, this having been done before the request for assistance had been made.

94 In this regard, it must be observed that A neither lodged an objection to the decision rejecting his request for assistance concerning the director, nor brought an action under Article 270 TFEU. Furthermore, the appointing authority cannot be criticised for not having adopted measures in relation to the director before 23 January 2015 (when A's request for assistance was lodged), because until that date it was not aware of any allegation that he had not conducted himself in accordance with the Staff Regulations – and the conduct of the director which is complained of in the application predates the request of 23 January 2015.

95 The applicants' claim for compensation in respect of the alleged default of the appointing authority, in not adopting measures of assistance to address the conduct of the director, must therefore be dismissed.

96 As regards the alleged negative remarks in the staff reports of some of the applicants, drawn up at the conclusion of the 2014 appraisal exercise which had been conducted by the director, the Parliament has acknowledged that comments not based on material and verifiable considerations were removed. The salutary action taken by the appointing authority in having the reports in question reviewed and corrected by another director from the same DG nevertheless supports the proposition that the director had conducted the appraisal exercise in a negative and biased way in relation to some of the applicants, for example by referring to the request for assistance during meetings relating to the 2014 appraisal exercise, and by disclosing that he had consulted the head of unit in connection with the staff reports.

97 In correcting the staff reports concerned, the appointing authority was undoubtedly able to restore objectivity to the 2014 appraisal exercise. Nevertheless, against the background of a request for assistance which was being dealt with, this matter demonstrates unlawfulness in the conduct of the 2014 appraisal exercise which justifies the appointing authority being ordered to compensate the non-material damage suffered by the applicants in that regard.

98 That having been said, in so far as the applicants, and A in particular, seek compensation for the non-material damage they claim to have suffered by reason of 'slurs, interference and hurtful remarks' on the part of the director and his 'repeated and systematic' behaviour, it must be held that this claim for compensation cannot succeed.

99 First, on the basis that they are seeking compensation for damage caused to them by conduct of the director which they claim to be contrary to Article 12a of the Staff Regulations, it is incumbent on them, as in relation to the non-material damage allegedly suffered by reason of the conduct of the head of unit, to bring an action before the national court, in respect of which they could, if necessary, seek assistance from the appointing authority pursuant to Article 24 of the Staff Regulations (see, to that effect, judgment of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraphs 111 to 113). Secondly and in any event, the conduct complained of, considered in the light of the evidence which has been produced at this stage before the Court, essentially reflects mismanagement of a situation of conflict within the unit (see, in relation to cases of mismanagement within the same directorate, judgments of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraph 128, and of 26 March 2015, *CW* v *Parliament*, F-124/13, EU:F:2015:23, paragraph 117, not set aside on this point by the judgment of 27 October 2016, *CW* v *Parliament*, T-309/15 P, not published, EU:T:2016:632).

100 In the light of the considerations set out above, it must be held, first, that, having regard to the duty of assistance incumbent on it under Article 24 of the Staff Regulations and Article 31 of the Charter of Fundamental Rights, the appointing authority failed to adopt measures to bring about an effective separation of the head of unit from the applicants and failed to ensure that the 2014 appraisal exercise was conducted in an impartial manner and, secondly, that that failure gives rise to liability on the part of the Parliament.

(d) The claim for compensation in respect of the duration of the disciplinary proceedings

101 As to the allegation that the administrative inquiry took an unreasonably long time to complete, it must be borne in mind that, as the Staff Regulations make no specific provision as to the period within which an administrative inquiry must be conducted by the administration, in psychological harassment cases or otherwise, the appointing authority is obliged to comply with the 'reasonable time' principle in such matters. In that regard, the EU institution, organ or body concerned must, when conducting an administrative inquiry, ensure that each measure is adopted within a reasonable period following the previous measure (see judgment of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 101 and the case-law cited).

102 On that point, whether or not an administrative procedure has been completed within a reasonable time is a matter to be determined in the light of the importance of the dispute to the person concerned, the complexity of the matter and the conduct of the those involved (see, by analogy, judgment of 10 June 2016, *HI* v *Commission*, F-133/15, EU:F:2016:127, paragraphs 109 and 113 and the case-law cited). Where there are allegations of psychological harassment, which is prohibited by Article 12a of the Staff Regulations, that determination is to be made as at the time when the administration has sufficient knowledge of the facts and conduct potentially constituting infringement by the officials or other staff concerned of their obligations under the Staff Regulations (see, to that effect, judgment of 10 April 2019, *AV* v *Commission*, T-303/18 RENV, not published, EU:T:2019:239, paragraph 82 and the case-law cited).

103 It should also be stated that the determination of what constitutes a reasonable time is not a matter in respect of which the administration enjoys a broad discretion, especially in cases of alleged psychological harassment in relation to which, in accordance with the case-law (judgment of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraphs 101 and 102), the administration is required to act with all requisite speed, particularly with a view to completing the administrative inquiry, and also that the EU legislature has not laid down, in respect of administrative bodies applying the Staff Regulations, a time limit for dealing with requests for assistance under Article 24 of those regulations, or with reports under Article 22a, read (in both cases) in conjunction with Article 12a.

104 In the present case, it must be noted that the administrative inquiry was not opened until almost two months after the request for assistance had been made, even though the appointing authority did not dispute that the prima facie evidence supporting the allegations of psychological and sexual harassment made in that request was genuine. Furthermore, although meetings with those requesting assistance and with the head of unit began on 15 April 2014, it is apparent from the Parliament's answers to the questions put by the Court that inquiry reports were not produced by the investigators who had been appointed by the appointing authority until 3 March and 17 November 2015, while the appointing authority put the matter concerning the head of unit before the Disciplinary Board on 6 January 2016.

105 The appointing authority thus took almost two years to deal with the request for assistance, which, in a case affecting practically the whole of a unit, is an unreasonable time.

106 In this regard, the Parliament cannot hide behind the fact that the administrative inquiry involved a significant number of people, when those people were all in posts within the same unit and were thus available (contrast the judgment of 10 June 2016, *HI* v *Commission*, F-133/15, EU:F:2016:127, paragraph 115, which concerned a situation where the witnesses to be interviewed were in different Member States, or indeed in a third State, which justified a longer procedure), especially given that they were waiting for the administrative inquiry to be completed. Similarly, the time taken cannot be justified by the fact that the appointing authority was obliged to protect the rights of defence of the person accused in the request for assistance, as those rights are clearly set out both in Articles 41 and 48 of the Charter of Fundamental Rights and, inter alia, in Article 86 of the Staff Regulations and Annex IX to those regulations.

107 As the applicants submit, the infringement of the 'reasonable time' principle was especially prejudicial in the present case because it meant that both the applicants and the head of unit were left in an unsatisfactory situation for a long period of time. Article 24 of the Staff Regulations requires the appointing authority to act with the greatest speed in conducting the administrative inquiry because, first of all, the possible acknowledgement by the appointing authority, following an administrative inquiry, that there has been psychological harassment is in itself likely to have a beneficial effect in the therapeutic recovery process of the victims, and may also be used by them for the purposes of proceedings before a national court and, secondly, where an administrative inquiry is continued until its completion, it may, on the other hand, be possible to disprove the allegations made by the

purported victim, thus making it possible to repair the damage which such an accusation, if it were to prove unfounded, may have caused to the person named as the alleged harasser by an inquiry procedure (judgments of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 59, and of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraphs 95, 123 and 124).

108 Furthermore, the appointing authority must be held to have failed to comply with its obligation, arising from the duty of assistance which it owes (judgments of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 47, and of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 98), to inform the complainants, in due time, of the action to be taken in respect of their request for assistance. Although the head of unit was informed of the opening of the administrative inquiry on 19 March 2014, the applicants were not informed until almost a month later. Similarly, the applicants do not seem to have been officially informed either of the date on which the disciplinary proceedings were opened against the head of unit, or of the nature and seriousness of the penalty imposed on him, when that information ought to have been provided to them, given that it was part and parcel of the handling of the request for assistance.

109 Again, the applicants did not receive copies – in non-confidential form or otherwise – of the reports produced at the conclusion of the administrative inquiry, despite this being necessary in the light of the principle of sound administration and the duty of assistance, which require the appointing authority to inform the persons concerned of the outcome of their request for assistance, especially where, as in the present case, the acknowledgement by the appointing authority, in the report produced on completion of the administrative inquiry, that there has been psychological harassment is in itself likely to have a beneficial effect in the therapeutic recovery process of the victims, and may also be used by them for the purposes of proceedings before a national court (judgments of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 59, and of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraphs 95, 123 and 124).

110 That having been said, the applicants cannot complain that the appointing authority did not conduct the disciplinary proceedings against the head of unit swiftly enough. Disciplinary proceedings are governed by their own rules and, in particular, are subject to the time limits which are strictly laid down in Annex IX to the Staff Regulations, in respect of each stage of such disciplinary proceedings, and which, in any event, do not seem to have been exceeded. In the present case, the disciplinary proceedings, which were opened on 6 January 2016 by bringing them before the Disciplinary Board, went on for a little over a year until the adoption, on 27 February 2017, of the final decision of the appointing authority provided for in Article 22 of Annex IX to the Staff Regulations, which does not appear to be an unreasonable time in view of the complexity of the case.

111 It follows from all of the foregoing considerations that in respect of its handling of the request for assistance only did the appointing authority infringe both Article 24 of the Staff Regulations and the reasonable time principle, and in those circumstances it is justified that non-contractual liability should arise, on the part of the Parliament, in favour of the applicants.

2. Damage and the causal link

112 Having regard to all the circumstances of the present case, the Court considers that the applicants did suffer non-material damage as a result of the way in which the appointing authority dealt with their request for assistance in the light of both Article 24 of the Staff Regulations and the reasonable time principle, and as a result of the way in which, in the context of the request for assistance being dealt with, it conducted the 2014 appraisal exercise.

113 Nevertheless, in relation to the damage allegedly arising in connection with the resignation of one of the officials of the unit, which is said to have been the result of his exasperation with the duration of the administrative procedure, it must be stated, first, that that official is not one of the applicants in

the present case and, secondly, that while he did refer, in his letter of resignation, to the matters raised in the request for assistance, he subsequently stated that he was resigning in order to accept a position in his Member State of origin, enabling him to rejoin his wife, who had had a high-risk pregnancy, requiring him, in future, always to be nearby.

114 As to the quantification of the non-material damage which the applicants can claim, contrary to the submissions of the applicants, the Court cannot ignore the fact, emphasised by the Parliament, that that institution agreed to be responsible not only for the legal fees incurred in connection with the action previously brought before the Court, which gave rise to the order of 17 July 2017, *DQ and Others* v *Parliament* (T-38/17, not published, EU:T:2017:557), but also, and most significantly, for (i) the applicants' costs of representation in the action they had brought against the Parliament before a Belgian court, and (ii) the entirety of the services provided by the applicants' adviser in relation to the procedure dealing with the request for assistance.

115 The costs of representation before the Belgian court do not fall within the duty of assistance under Article 24 of the Staff Regulations, because the applicants' proceedings were not against the head of unit, but against the Parliament. As to the fees relating to the request for assistance, it must be borne in mind that, where there is no requirement for an official to be represented by a lawyer in the pre-litigation procedure, such fees could not in principle have been regarded as recoverable costs, or claimed in this action for damages (see, to that effect, judgment of 10 December 2008, *Nardone* v *Commission*, T-57/99, EU:T:2008:555, paragraphs 139 and 140).

116 Having regard to the concern for welfare reflected in the *ex gratia* financial assistance provided by the Parliament, and to all the matters advanced by the applicants which can properly be regarded as constituting unlawfulness on the part of the appointing authority, and as causing them non-material damage, the Court considers (i) that such non-material damage can fairly be assessed, *ex aequo et bono*, in the total amount of EUR 36 000, to be divided amongst the applicants, and (ii) that the claim for damages must be dismissed as to the remainder.

C. The claim for an order requiring the Parliament to pay compensatory and late-payment interest

117 The applicants also seek an order for the Parliament 'to pay the compensatory and late-payment interest which has accrued in the interim'.

118 In the absence of any specific observations from the Parliament in relation to this aspect of the claim, the relief sought by the applicants must be granted, by ordering that interest is to be added to the amount of EUR 36 000, at the rate applied by the European Central Bank (ECB) to its main refinancing operations increased by three and a half percentage points and, in the absence of any precise indication as to the date from which such interest should run, that it is to be calculated as from the date on which the claim for damages was made.

IV. Costs

119 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Furthermore, Article 134(3) of the Rules of Procedure provides that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs, unless the Court considers it justified, in view of the circumstances of the case, that one party, in addition to bearing its own costs, should pay a proportion of the costs of the other party.

120 In the present case, the applicants and the Parliament have partly failed on one or more of their heads of claims. However, having regard to the circumstances of the case, it appears justified for the Parliament, in addition to bearing its own costs, to pay half of the costs incurred by the applicants, on the basis, it should be emphasised, that for the purposes of payment of those costs, the Parliament may take into account the fact that the work done by the adviser, for the purposes of bringing this action, was substantially facilitated by the work which had been necessary for the purposes of the procedure relating to the request for assistance, and of bringing the actions in Cases F-49/14 and T-38/17, which has already been financially supported by the Parliament.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Orders the European Parliament to pay DQ and the other applicants whose names appear in the annex the total amount of EUR 36 000, to be divided between them, in respect of the non-material harm which they have suffered, together with interest at the rate applied by the European Central Bank (ECB) to its main refinancing operations, increased by three and a half percentage points, for the period from 13 December 2017 until the date on which the Parliament pays the amount of EUR 36 000;**

2. **Dismisses the action as to the remainder;**

3. **Orders that the Parliament will bear its own costs and pay half of the costs incurred by DQ and the other applicants whose names appear in the annex;**

4. **Orders that DQ and the other applicants whose names appear in the annex will bear half of their own costs.**

Valančius Nihoul Svenningsen

Delivered in open court in Luxembourg on 3 October 2019.

[Signatures]