Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

12 March 2025*

(Law governing the institutions – Member of Parliament – Psychological harassment – Decisions of the President of the Parliament finding that an accredited parliamentary assistant suffered psychological harassment and imposing on a Member the penalty of forfeiture of entitlement to the subsistence allowance for 10 days – Right to be heard – Rights of the defence)

In Case T-349/23,

Monica Semedo, residing in Grevenmacher (Luxembourg), represented by T. Bontinck, A. Guillerme and L. Marchal, lawyers,

applicant,

v

European Parliament, represented by D. Boytha, N. Görlitz and A. Krachler, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Papasavvas, President, R. da Silva Passos, N. Półtorak, I. Reine and T. Pynnä (Rapporteur), Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

having regard to the request for production of documents sent by the Court to the Parliament on 11 July 2024 and the Parliament's response lodged at the Court Registry on 17 July 2024,

further to the hearing on 8 October 2024,

gives the following

* Language of the case: French.

Judgment

1 By her action under Article 263 TFEU, the applicant, Ms Monica Semedo, seeks annulment of the decisions of the European Parliament of 17 April 2023 by which the Parliament, in the first place, found that certain acts which she was alleged to have engaged in, taken individually and as a whole, constituted psychological harassment within the meaning of Article 12a(3) of the Staff Regulations of Officials of the European Union ('the first contested decision' and 'the Staff Regulations', respectively) and, in the second place, imposed on her a penalty consisting in the forfeiture of entitlement to the subsistence allowance for a period of 10 days ('the second contested decision' and, taken together with 'the first contested decision', 'the contested decisions').

Background to the dispute

2 On 4 March 2022, the Advisory Committee dealing with harassment complaints concerning Members of the European Parliament ('the Committee') notified the applicant, who is a former Member of Parliament, that an investigation had been initiated against her as a result of a complaint lodged by her former accredited parliamentary assistant ('the complainant') and sent her a summary of the complainant's allegations as well as the non-confidential evidence submitted by him. The Committee asked the applicant to submit written observations on those allegations by 17 March 2022 and stated that it would invite her to be heard at a forthcoming meeting, likely to take place on 26 April 2022.

3 On 17 March 2022, the applicant submitted written observations to the Committee on the complainant's allegations.

4 By email of 7 April 2022, the Committee invited the applicant to be heard on 26 April 2022. It explained that the meetings of the Committee were held in camera and were part of an internal administrative procedure, not a judicial procedure, which was why lawyers were not admitted to the hearings.

5 On 12 April 2022, the applicant's lawyers sent a letter to the Committee stating that, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the case-law of the Court of Justice relating to the rights of the defence in procedures liable to culminate in a decision adversely affecting a person, the applicant could not be denied the assistance of counsel and that they would attend the hearing on 26 April 2022.

6 By letter of 21 April 2022, the Chair of the Committee refused the request made by the applicant's lawyers to attend the hearing on 26 April 2022.

7 By letter of 22 April 2022, one of the applicant's lawyers informed the Committee that the applicant would not attend the hearing on 26 April 2022 or answer any other call to appear until she could be assisted by a lawyer.

8 On 26 April 2022, the complainant was heard by the Committee.

9 On 28 April 2022, the Chair of the Committee sent a letter to the applicant's lawyers, again inviting her to be heard on 31 May 2022.

10 By letter of 4 May 2022, one of the applicant's lawyers explained that he and the applicant were available for the hearing on 31 May 2022, but that the applicant would not attend without her lawyer.

11 On 15 November 2022, the Committee adopted its report on the complaint together with its recommendations ('the Committee's report') and submitted them to the President of the Parliament. The Committee concluded that the acts alleged by the complainant constituted psychological harassment within the meaning of Article 12a(3) of the Staff Regulations. It recommended that, under Rule 176 of the Rules of Procedure of the Parliament, a penalty be imposed on the applicant consisting in the forfeiture of entitlement to the subsistence allowance for a period of 20 days.

12 On 19 December 2022, the President of the Parliament sent the applicant an anonymised version of the Committee's report and invited her to submit written observations on that report by 6 January 2023, in accordance with Article 11(2) of the Decision of the Bureau of the European Parliament of 2 July 2018 on the functioning of the Committee and its procedures for dealing with complaints ('the Bureau decision') and Rule 176(2) of the Rules of Procedure of the Parliament.

13 On 16 January 2023, the applicant's lawyers submitted written observations on the Committee's report, which the President of the Parliament forwarded to the Committee for consideration. In her observations, the applicant asked, inter alia, to be provided with a copy of the Committee's entire file, including the various witness statements which could not be anonymised.

14 On 9 March 2023, the Committee informed the President of the Parliament that the applicant's written observations of 16 January 2023 did not call into question the findings made in its report.

15 On 17 April 2023, the President of the Parliament adopted the contested decisions.

Forms of order sought

16 The applicant claims that the Court should:

– annul the contested decisions;

– order the Parliament to pay the costs.

17 The Parliament contends that the Court should:

– dismiss the action as inadmissible in so far as it is directed against the second contested decision and as unfounded in so far as it is directed against the first contested decision;

– order the applicant to pay the costs.

Law

Admissibility of the claims directed against the second contested decision

18 The Parliament states that the two pleas in law relied on in the application relate only to the first contested decision. It submits that, in the absence of arguments concerning the second contested decision, the action is inadmissible in so far as it is directed against that decision, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of Article 53 thereof, and Article 76(d) of the Rules of Procedure of the General Court.

19 The applicant disputes that line of argument.

20 In that regard, it should be noted that, in the second contested decision, the President of the Parliament, after referring to the first contested decision by which she concluded that the conduct alleged by the complainant constituted psychological harassment on the part of the applicant, decided to impose a penalty on the applicant.

21 As the applicant rightly points out, the lawfulness of the second contested decision therefore depends on the lawfulness of the first contested decision. The annulment by the Court of the first contested decision would also entail the annulment of the second contested decision, regardless of whether the applicant has put forward arguments specifically relating to the latter decision. In any event, the application may be construed as raising arguments challenging the lawfulness of both contested decisions.

22 It follows that the plea of inadmissibility raised by the Parliament, claiming that the action is inadmissible in so far as it is directed against the second contested decision, must be rejected.

Substance

23 In support of her action, the applicant relies on two pleas in law. The first plea alleges breach of the right to be heard and the rights of the defence. The second plea alleges manifest error of assessment in the classification of the conduct concerned as psychological harassment.

24 In the context of the first plea, the applicant takes issue with the Parliament for failing to hear her orally and denying her the assistance of a lawyer, first of all before the Committee (first part of the plea) and then before the President of the Parliament (second part of the plea).

25 The Court considers it appropriate to begin by examining the second part of the first plea.

26 The second part of the first plea comprises three complaints. In the first complaint, the applicant takes issue with the Parliament for failing to hear her orally before the President of the Parliament, in breach of Article 11(2) of the Bureau decision and Article 48 of the Charter. In the second complaint, the applicant submits that the Parliament denied her the assistance of a lawyer before the President of the Parliament, in breach of Article 48 of the Charter, the case-law relating to disciplinary proceedings and the general implementing provisions of the other institutions. Lastly, in the third complaint, the applicant criticises the Parliament for having anonymised the

annexes in such a way as to make it impossible for her to defend herself. The applicant adds that, had it not been for those irregularities, both the Committee's report and the contested decisions might have been different.

27 The Parliament disputes the applicant's arguments. It submits, first, that Article 11(2) of the Bureau decision leaves open the question of whether the hearing of the Member concerned by the President of the Parliament must take place by oral or written procedure and that Rule 176(2) of the Rules of Procedure of the Parliament, which governs the arrangements for the hearing before the President of the Parliament, does not lay down any obligation for the Member to be heard in person; secondly, that the applicant was able to submit written observations with the assistance of her lawyer on 16 January 2023, before the contested decisions adversely affecting her were adopted; and, thirdly, that the relevant written evidence and the oral evidence was available to the applicant, as the Committee's report contained the substance of the relevant parts of the witness statements that were taken.

28 The Court considers it appropriate to begin by examining the third complaint.

29 The applicant argues that the anonymisation of the annexes to the Committee's report made it impossible for her to defend herself. She states that the Committee's report and the first contested decision, as notified to her, refer to two witness statements, the content of which is reproduced only in part in the Committee's report. Furthermore, the Committee's report and the first contested decision do not contain the written evidence relied on to determine that harassment took place.

The applicant's access to witness statements

30 On the matter of access to witness statements, it should be noted that, according to the case-law, in a procedure intended to determine whether harassment has occurred, the general principle of respect for the rights of the defence means that, with due regard to any requirements of confidentiality, the person against whom allegations have been made must, prior to the adoption of the decision adversely affecting him or her, receive all documents in the file, both inculpatory and exculpatory, concerning that harassment and be able to state his or her views on them (judgment of 3 February 2021, *Moi* v *Parliament*, T-17/19, EU:T:2021:51, paragraph 103).

31 It is also clear from the case-law that the person accused of harassment is entitled, in order to be able effectively to submit his or her observations, to disclosure of a summary, at the very least, of the statements made by the various persons consulted during the investigation procedure, as those statements were used by the Committee in its report in order to make recommendations to the President of the Parliament, and such a summary should have been disclosed while respecting, if necessary, the principle of confidentiality (see, to that effect and by analogy, judgment of 1 September 2021, *KN* v *EESC*, T-377/20, EU:T:2021:528, paragraph 113 and the case-law cited).

32 In order to ensure that witness statements remain confidential and that the objectives of such confidentiality are respected, while ensuring that the person concerned is properly heard before a decision adversely affecting him or her is adopted, certain techniques may be used, such as anonymisation, or even disclosure of the substance of the witness statements in the form of a summary, or the redaction of some of the content of those statements (see, to that effect, judgments of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 59, and of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 66).

33 In the present case, it is apparent from the file that, during the procedure which led to the adoption of the contested decisions, the applicant had no access either to the statements made by the two witnesses before the Committee or to the summary of the hearings of those two witnesses set out in Annex II to the Committee's report, even though those statements were used by the Committee in its report in order to make recommendations to the President of the Parliament, in the light of which the President adopted the contested decisions. Indeed, the content of Annex II to the Committee's report, containing a summary of the hearings of the two witnesses, was entirely redacted.

34 In that regard, the Parliament contends that the non-confidential version of the Committee's report contains a summary disclosing the substance of the witness statements taken by the Committee in the course of the investigation, with the result that the applicant was deprived only of information enabling the witnesses who were heard to be identified.

35 In view of the arguments set out in paragraph 34 above, it is necessary to examine whether the non-confidential version of the Committee's report contains a summary of the witness statements taken by that Committee in the course of the investigation, before determining, if applicable, whether that summary reflects the substance of those statements (see, to that effect and by analogy, judgment of 1 September 2021, *KN* v *EESC*, T-377/20, EU:T:2021:528, paragraph 121).

36 In the first place, as regards the inclusion in the non-confidential version of the Committee's report of a summary of the statements made by the witnesses who were heard, it should be observed that, in her letter of 19 December 2022 to the applicant, the President of the Parliament stated that the applicant would 'find an anonymised version of that Committee's report as an annex to [that] letter, referring to the witness statements collected and taken into account by it, in paragraphs 5.1.3, 5.2.2, 5.2.3 and 5.2.4 of the report'.

37 Thus, paragraph 5.1.3 of the Committee's report, concerning the witnesses, states:

'The two witnesses heard by the Committee were found to be credible and there were no major factual contradictions between their statements; only a difference in the perception of the Member's conduct and the situations of conflict concerned was observed. In assessing the statements of the two witnesses, the Committee took their respective work situations into account. However, in several respects, the statements of both witnesses confirmed the complainant's allegations.'

38 Paragraph 5.2.2 of the Committee's report, concerning the allegation that the applicant created a stressful working environment, states:

'… It is apparent from credible oral evidence provided by the witnesses that many of the meetings were not well organised, and that [confidential] was not prepared for those meetings, in particular as regards the briefing notes prepared by the APAs. [confidential] stated that additional messages were received from the Member late in the evening and early in the morning.

…

Other oral evidence (confirmed by one of the witnesses) referred to situations in which [confidential] asked [confidential] to prepare briefing notes on compromise amendments that had not yet been published and on the conclusions of a European Council meeting that had not yet ended.

…

According to both witnesses, the organisation of team work for [confidential] was problematic. [confidential] explained that team meetings were a constant source of tension and anxiety, that they were chaotic and unstructured, and that the Member set short deadlines and was rude. [confidential] stated that the previous harassment procedure had generated tension, but that efforts were constantly being made to establish good working practices within the Member's office.

…

According to the available evidence, including the oral testimony of one of the witnesses, the Member was not welcoming towards [confidential] at the training session, even though the very purpose of that session was to resolve problems in the working relationship between the assistant and the Member.

…'

39 Paragraph 5.2.3 of the Committee's report, concerning the allegation of aggressive responses, states:

'…

Nevertheless, it is apparent from oral evidence that the witnesses confirmed, to varying degrees, that the Member spoke inappropriately to her staff, particularly when under pressure. The witnesses confirmed the allegations that [confidential] ignored and responded aggressively to the complainant's explanation of the correct title of a proposal for a Directive (on the minimum wage). One of the witnesses also confirmed that the Member had shouted at the complainant over the telephone following a voting error and mentioned another similar incident at which the witness was not present, but which he was told about.

The evidence, written and oral, relates to a situation which arose on 5 July 2021, when [confidential] was travelling to Strasbourg by car with his wife and was forced to attend a team meeting via Zoom. During that meeting, as confirmed by one of the witnesses, the Member shouted at another APA, putting [confidential] under huge stress, to the point that he took the wrong exit to avoid an accident.

The Committee took the view that the oral evidence was sufficient to establish that [confidential] acted aggressively towards the complainant, namely by accusing him of failing to brief her sufficiently and in a timely manner, by responding aggressively to the explanations he provided to her, and by punishing his mistakes by shouting at him and making rude comments[.]'

40 Point 5.2.4 of the Committee's report, concerning the allegation that the applicant had no regard for the complainant's personal life and well-being, states:

'…

In relation to [confidential]'s taking leave for personal reasons, the written evidence (supported by the oral testimony of the witnesses) shows that he was confident that he had provided, to the best of his knowledge, the appropriate information, even though he had not done so well in advance …. … One of the witnesses stated that [confidential] was "irritable" at the meeting after the complainant announced his intention to take leave because he was getting married and that she asked [confidential] to contact [confidential] during his leave to check whether he was actually working, as promised[.]

…'

41 In that regard, it should be noted that, in the non-confidential version of the Committee's report, the Committee stated that it had taken statements from two witnesses, without specifying who they were or the job position they held. In addition, that report refers to the oral evidence taken into account by the Committee when setting out and assessing each of the alleged acts of harassment.

42 Specifically, for each of the acts which the applicant was alleged to have engaged in, the report refers back to the oral statements taken into account. The report also specifies, for each of the acts at issue, whether it is corroborated only by written evidence, only by oral evidence, or by both types of evidence (pages 9, 11 and 12 of the Committee's report).

43 It is apparent from the foregoing that the non-confidential version of the Committee's report contains a summary of the statements of the witnesses.

44 In the second place, in order to determine whether the Parliament observed the applicant's rights of defence, the Court must satisfy itself that the summary of the statements of the witnesses reflects the substance of the testimony given, in accordance with the case-law cited in paragraph 35 above.

45 To that end, by way of a measure of inquiry, the Court requested the Parliament to produce the confidential version of Annex II to the Committee's report, indicating that it would remain confidential vis-à-vis the applicant.

46 First, it must be stated that there are differences in perception between the two oral witness statements taken. Those differences relate, in particular, to the applicant's dealings with the accredited parliamentary assistants outside work and the complainant's responsibility for the deterioration in his relationship with the applicant. However, those differences in perception are not apparent from the summary of the witness statements set out in the Committee's report.

47 Secondly, there is a discrepancy between the summary of the witness statements set out in the Committee's report and the content of Annex II to that report. Thus, many of the elements presented in the Committee's report as being apparent from the witness statements, such as, in particular, the applicant's lack of preparation for team meetings and the chaotic and disorderly nature of those meetings, the sending of messages early in the morning (see paragraph 38 above),

the applicant's rudeness and shouting (see paragraph 39 above) and the request to check that the complainant was working during his leave (see paragraph 40 above) are not mentioned in Annex II to the Committee's report at all.

48 In those circumstances, it must be held that the Committee's report does not reflect the substance of the witness statements taken, within the meaning of the case-law cited in paragraph 35 above, since the witnesses' differences in perception are not apparent from that report and there are discrepancies between that document and the summary produced in Annex II thereto.

49 Therefore, in accordance with the case-law cited in paragraphs 30 and 31 above, it must be concluded that the applicant's rights of defence were not observed.

The applicant's access to written evidence

50 On the matter of access to written evidence, the applicant claims that the Committee's report and the first contested decision, as notified to her, did not contain the written evidence relied on to determine that harassment had taken place.

51 In the present case, it is apparent from the Committee's report and the first contested decision that, in support of the allegation that the applicant created a stressful working environment, account was taken of three messages sent by the applicant outside working hours, dated 20 October 2020 and 4 and 6 October 2021 respectively, and five requests with tight deadlines or posing a challenge for the complainant, dated 20 October 2020, 31 August, 22 September and 18 October 2021 and September 2021 respectively.

52 Of the written evidence referred to in paragraph 51 above, only the email of 4 October 2021 and the exchange of messages via WhatsApp in September 2021 were forwarded to the applicant by the Committee as an annex to its letter of 4 March 2022, which informed the applicant that an investigation had been initiated against her. By contrast, the other written evidence is not included either in the annexes to the Committee's letter to the applicant of 4 March 2022 or in the annexes to the Committee's report, which the President of the Parliament sent to the applicant on 19 December 2022 (see paragraphs 2 and 12 above). That other evidence was, however, furnished by the Parliament during the proceedings before the Court, as an annex to the defence.

53 It follows that not all of the written evidence relied on to determine that harassment had occurred was disclosed to the applicant during the administrative procedure.

54 The Parliament contends that the Committee's report identified all of the written evidence by date, method of communication and content, with the result that the applicant, in so far as she was the author thereof, could easily consult that evidence and, therefore, state her observations on it. In that regard, the applicant did not dispute that the exchanges in question were in her possession.

55 However, in order to be able to defend him or herself, the person against whom allegations have been made must have the opportunity to ascertain the detailed content of the documents in the file serving as the basis for those allegations in the decisions concerning him or her (judgment of 3 February 2021, *Moi* v *Parliament*, T-17/19, EU:T:2021:51, paragraph 110).

56 In the present case, since it is apparent from the file that not all of the written evidence was furnished to the applicant by the Committee or the President of the Parliament during the administrative procedure, it must be held, in accordance with the case-law cited in paragraph 55 above, that the applicant's rights of defence were not observed.

The consequences of breach of the principle of respect for the rights of the defence

57 According to the case-law, a breach of the rights of the defence results in the annulment of the decision taken at the end of a procedure only if, had it not been for such an irregularity, the outcome of the procedure might have been different (judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 76).

58 It is also clear from the case-law that the condition referred to in paragraph 57 above is satisfied where, having not had access to the documents which should have been disclosed in accordance with respect for the rights of the defence, the applicant was not able effectively to submit his or her observations and was thus deprived of even a slight chance of being better able to defend him or herself (see judgment of 3 February 2021, *Moi* v *Parliament*, T-17/19, EU:T:2021:51, paragraph 116 and the case-law cited).

59 In such a case, failure to disclose documents in the file which the authorities have relied on inevitably affects, in the light of the protection to be afforded to the rights of the defence, the lawfulness of the measures adopted at the end of a procedure liable to affect the applicant adversely (see judgment of 3 February 2021, *Moi* v *Parliament*, T-17/19, EU:T:2021:51, paragraph 117 and the case-law cited).

60 In the present case, it is apparent from the file that, during the procedure concerning her, the applicant had no access either to a summary reproducing the substance of the witness statements taken by the Committee or to the documents in the file serving as the basis for the allegations against her, in particular the emails or messages underpinning those claims, even though that information was taken into consideration in order to find that harassment had occurred and to impose a penalty.

61 In those circumstances, it must be held, on the basis of the case-law cited in paragraphs 57 to 59 above, that the applicant was deprived in the present case of the chance of being better able to defend herself and that that irregularity inevitably affected the content of the contested decisions.

62 The contested decisions must therefore be annulled for breach of the applicant's rights of defence, without there being any need to examine the other complaints in the first plea in law or the second plea in law.

Costs

63 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. Since the Parliament has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls the decisions of the President of the European Parliament of 17 April 2023 by which the President, in the first place, found that certain acts which Ms Monica Semedo was alleged to have engaged in constituted psychological harassment and, in the second place, imposed on Ms Semedo a penalty consisting in the forfeiture of entitlement to the subsistence allowance for a period of 10 days;**

2. **Orders the Parliament to pay the costs.**

Papasavvas da Silva Passos Półtorak

Reine Pynnä

Delivered in open court in Luxembourg on 12 March 2025.

[Signatures]