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Staff Matters

Legal News from Union Syndicale



In this second issue of **Staff Matters**, we will focus on the assistance that is - or should be - given by institutions to victims of harassment. Do not hesitate to send us your suggestions for new subjects or your questions and comments :

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When psychological harassment occurs and the person concerned requests assistance, the employing authority has to act appropriately within reasonable time. Otherwise, the staff member may be entitled to damages.

Case T-275/17, Curto v Parliament of 13 July 2018

Case T-377/17, SQ / EIB of 13 July 2018

In Brief

The duty of the employing authority to provide assistance to a staff member implies that a request for assistance is handled reasonably fast. In the above two cases, the Court ordered the European Parliament and the EIB to pay 10 000 € each to staff members who had suffered psychological harassment.

The Court confirms its jurisprudence on what is 'psychological harassment' and clarifies the scope of its powers of judicial review and the duties of institutions to open disciplinary proceedings in cases of psychological harassment.

Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.

Facts

In Case T-275/17, *Curto*, a Member of Parliament (MEP) requested the employing authority to terminate her assistant's (the applicant of the case) contract by stating that the assistant, without permission, had not come to work for one week. The assistant submitted a request for assistance by the EP (Art. 24 Staff Regulations) and reported that the MEP had insulted her with humiliating and scornful language, threats and insults.

In Case T-377/17, *SQ / EIB*, the applicant claimed that a

director removed her from a position of responsibility without due cause, that he had belittled her, spoken to her inappropriately, aggressively, disdainfully and accusingly, withheld certain information, failed to provide her with feedback on her performance at work and that he had treated her unfavourably in relation to other persons. The EIB requested the director to excuse towards the staff member and announced that if a new complaint were to be made concerning him within a three-years period, the employing authority would open a disciplinary procedure against him. The EIB informed the staff member that the procedure had to remain strictly confidential, including within the institution itself.



Court decisions

The Court confirmed the definition of “psychological harassment”:

Article 12a(3) of the Staff Regulations defines it as ‘improper conduct’ with the following two cumulative qualifications:

1. The term covers improper conduct in the form of physical behaviour, spoken or written language, gestures or other acts, which takes place over a period and is repetitive or systematic, suggesting that psychological harassment must be understood as a process that occurs over time and presupposes the existence of repetitive or continual behaviour which is intentional, as opposed to accidental.
2. Such physical behaviour, spoken or written language, gestures or other acts must have the effect of undermining the personality, dignity or physical or psychological integrity of a person.

The Court does not only apply a control of “manifest error of assessment”, but **comprehensively reviews** the facts in

the light of the above two conditions. In Case *Curto* the Court decided that an MEP is required to have due regard for the dignity and health of the assistants. The nature and, in particular, the singular vulgarity of the language that the MEP used with her assistant constitute belittlement, both of the assistant herself and of her work.

The Court accepted neither the closeness of the MEP’s relationship with her assistant nor the tense atmosphere as justifications of the behaviour of the MEP. The request for assistance (including the administrative inquiry) was not handled appropriately by the EP, because it took too long time. The Court therefore awarded 10.000 Euro of damages to the assistant.

In Case T-377/17, *SQ / EIB*, the Court considered that the definition of ‘psychological harassment’ does not require that the harassing conduct is repeated in the same way. Also the **cumulative effect** of the other kinds of conduct that could undermine the self-esteem and self-confidence of the person affected by that conduct have to be taken into account. In this Case, the EIB had failed to examine whether each of the director’s acts alleged could have, in conjunction with the others, resulted objectively,

in undermining the administrator's self-esteem and confidence.

The Court found that the EIB adopted an insufficient measure when it concluded that disciplinary proceedings would be opened against the director only if there was a further inappropriate conduct within a three-years period. If an action needs to be taken, it would have to be immediate. The EIB was further not correct to make the statement of a repeated reprehensible conduct after all dependent on whether the harassed staff member decides to file a complaint.

Finally, the Court decided that the EIB had no right to impose a level of confidentiality on its decision, amounting to a prohibition to disclose to third parties the existence and content of the events. It awarded a damage of 10.000 Euro to the EIB for having unduly imposed silence on the harassed person.

Comments

The employing authority has to take its **duty to provide assistance** seriously. A practical pre-requisite for this is that the harassed staff member is actually and timely turning to the employing authority in order to request assistance (Art. 24 SR). Upon the request, the administration is not supposed to make light of the improper behaviour or to delay the handling of countermeasures. The second Case (*SQ/EIB*) illustrates that the employing authority must not issue gagging orders (i.e. unduly impose silence upon the victim). Otherwise, the harassed person could not even make use of the information or documents in order to claim damages at a national court against the harasser. It would run counter to the goal of preventing and penalising all occurrences of psychological harassment within the institutions.

It is important to retain that the following four **counter-arguments** or strategies cannot serve as defence of the administration when it is confronted with alleged psychological harassment :

- a. The harassing behaviour towards the other colleague (and thus inactivity of the employing authority) cannot be justified by the claim that the two persons are "close to each other" or that there is a "tense atmosphere" at work.
- b. The acts that form harassment do not need to be repeated in the same way, but can consist in various different acts which, taken together, constitute psychological harassment.
- c. If there is harassment, not taking action or deferring action to future cases of repetition, is not an option.
- d. The employing authority must not impose confidentiality upon the victim.

Not handling occurrence of psychological harassment timely does not only affect the ability of an institution to fulfil its mandate, but can lead to serious health problems of staff, up to the point of invalidity of the staff member and to the appearance of professional diseases. Professional diseases generated by psychological harassment can be equivalent to other professional diseases, for example those generated by accidents. This will be subject of another newsletter of Union Syndicale.

Other cases with similar legal questions:

Case T-592/16, *HQ v CPVO*
Case F-12/13, *CQ v Parliament*
Case F-71/10, *Cantisani v Commission*
Cases F-129/12 and F-132/14, *CH / Parliament*
Case F-26/14, *CN / Parliament*

