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Staff Matters

Legal News from Union Syndicale

This newsletter is dedicated to the important subject of harassment. Many real-life scenarios involve several persons. We explain the preconditions that a staff member's conduct must fulfil in order to amount to psychological harassment. The three judgments presented here set out the duty of care on the part of the institutions who in cases of alleged harassment have to respond with the necessary vigour, rapidity and solicitude required by the circumstances of the case. As a new legal development, the ECJ delineates how harassment can be committed by several persons collectively, in concertation. Harassment is even conceivable in a 'passive' way, permitted that the conduct of the 'passive' person still reflects an intentional individual conduct next to another, harassing person. Finally, the Court applies the test of an objective (impartial and reasonable) observer when it comes to assessing the acts allegedly forming harassment.

You can continue to send us your suggestions for new subjects or your questions and comments :

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Psychological harassment – Art. 12a SR
– request for assistance – Art. 24 SR –
administrative inquiry – duty of care
– principle of good administration –
collective/passive harassment – *prima facie* evidence

Harassment: recent legal developments.
Is harassment possible in a “collective” and “passive” way, involving several persons ?

Case T-295/23 and T-1176/23, *WU v Eurojust*, judgment of 15 October 2025

Case C-343/23 P, *Colombani v EEAS*, judgment of 16 April 2026

Case T-565/22, *HF v EP*, judgment of 9 April 2025

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 of Case *WU v Eurojust*

In Case *WU v Eurojust*, the applicant, a member of temporary staff of Eurojust, submitted a request for assistance under Art. 24 of the Staff Regulations (SR), alleging repeated conduct of psychological harassment committed by ten staff members of Eurojust, all of which allegedly emanated from the conduct of the Administrative Director of that agency. In respect of the staff of Eurojust, the Administrative Director exercises the powers conferred on the appointing authority and on the authority entitled to conclude contracts of employment (the AECE). At the applicant's request, the Administrative Director recused himself from the procedure. Eurojust divided the processing of the request for assistance into two parts, by entrusting the AECE's powers to two different bodies: the College of Eurojust, designated to examine the allegations against the Administrative Director (*part 1*), delegated its AECE powers to three of the national members of which it was composed. The Executive Board of Eurojust, for its part, was designated to examine the allegations against the other nine staff members (*part 2*). The two different bodies opened an administrative inquiry in respect of parts 1 and 2, respectively, the conduct of which they entrusted to the same group of external investigators. On the basis of the inquiry report drawn up by the investigators, the College and the Executive Board decided to close that inquiry with no further action for their respective parts. They subsequently rejected the two complaints lodged by the applicant against those decisions.

Decision of the Court in Case *WU v Eurojust*

The General Court (GC) annuls the two contested decisions taken by the agency's College and Executive Board due a breach of the duty to exercise due care towards the applicant. The GC recalls that under Art. 12a and 24 SR the

institutions have to ensure that the working conditions of staff respect their health, safety and dignity and they must provide them in good time with procedures that ensure that their working conditions meet those requirements. Art. 24 SR imposes on them an obligation to provide assistance in order to protect EU officials from attacks and ill-treatment not only by third parties, but also by other officials or other staff members of the European Union, irrespective of their hierarchical position, or by members of an institution. By virtue of the duty to provide assistance and when faced with an incident which is incompatible with the good order and tranquillity of the service, the institutions have to 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. The duty to provide assistance includes, in particular, an obligation of the administration to examine seriously, expeditiously and in total confidentiality the request for assistance in which psychological harassment is alleged and to inform the applicant of the outcome. The principle of good administration (Art. 41 Charter of Fundamental Rights, FRC) includes a duty of care on the part of the administration, which must act with care and caution. Failure to comply with that obligation constitutes a breach of a rule of law intended to confer rights on individuals.

On the preconditions for recognising psychological harassment, the GC recalls that acts relating to harassment are parts of a continuous process over time. It may therefore by definition be the outcome of a set of different acts which, considered in isolation, would not necessarily constitute per se psychological harassment but which, viewed as a whole and in context, including because of their build-up over time, could be regarded as such. When examining whether the acts alleged by the applicant constitute psychological harassment, those facts should be

examined both individually and jointly as part of the general working environment created by the behaviour of one or more members of staff towards another.

In the present case, the Executive Board asked the external investigators to investigate only the facts relating to part 2 and not all the facts alleged in the request for assistance of the applicant. It was only later that the national members to whom powers had been delegated by the College extended the task initially entrusted to the external investigators to the facts relating to part 1. The drawing up of a single inquiry report by external investigators, even if the latter were to be regarded as impartial, is not sufficient to satisfy all the requirements imposed on Eurojust by virtue of its duty to provide assistance. Those investigators were not vested with the powers of the appointing authority or the AECE and their sole competence was to draw up an inquiry report and, where appropriate, to issue an opinion on the responsibility of the persons concerned by that inquiry.

Second, since the psychological harassment alleged in the request for assistance could be carried out by several persons performing duties within Eurojust and acting in a coordinated manner or simultaneously, the examination of the allegations by one AECE in respect of a part of those allegations and by a different AECE in respect of the other part, infringes the administration's obligation to examine with care and caution all the relevant information in the case before it. Because such an examination is liable to preclude an overall and contextual assessment of all the facts complained of as characterising the existence of the psychological harassment alleged and to disregard, in the assessment of those facts, the interactions which may have existed between the persons to whom those acts are imputed and between the conduct alleged against them. The General Court concludes from this that Eurojust did not satisfy the duty to exercise due care inherent in the principle of good administration in the light of which it is required to implement its duty to provide assistance under Art. 24 SR.

Concerning the consequences of the procedural irregularities and failure to observe the principle of good administration, the GC finds that by dividing the request for assistance into two parts entrusted to two separate AECEs, Eurojust did not give that of the two AECEs which was competent to do so the possibility of examining the interactions that might exist between the Administrative Director and the other persons referred to in the request for assistance. Thus, it cannot be ruled out that, without the breach of the duty to exercise due care, the content of the decision lawfully adopted by the competent AECE could have been different and could have led to the finding of the existence of harassment. Consequently, the Court had to annul the contested decisions.

Facts and Decision in Case *Colombani v EEAS*

This dispute recently decided by the Court of Justice (ECJ) similarly was about a rejection of the applicant's request for assistance under Art. 24 SR and allegations of psychological harassment (Art. 12a SR) raised by the applicant against four persons. The General Court, confirmed by the ECJ on appeal, had rejected all of the applicant's arguments, finding in substance that he had not shown a sufficient *prima facie* case of harassment and that his appointing authority (EEAS) was not required to open an administrative inquiry. The EEAS had not unlawfully refused assistance on the facts as presented in the request. It is for the person requesting assistance to provide a *prima facie* indication of psychological harassment. That term is defined as 'abusive conduct' which takes the form of behaviours, words, acts, gestures or writings that are manifested 'persistently, repetitively or systematically'; this implies that psychological harassment must be understood as a process that necessarily unfolds over time and presupposes the existence of repeated or continuous actions which are 'intentional', as opposed to 'accidental'. Second, in order to fall within that concept, those behaviours, words, acts,



gestures or writings must have the effect of undermining the personality, dignity or physical or psychological integrity of a person.

It cannot be ruled out that harassment may be committed collectively by several persons where their actions form part of a single, unified pattern of harassment and where each of them contributes to it through their own individual and personal conduct. However, the ECJ continues, a person claiming to be the victim of collective psychological harassment must adduce *prima facie* evidence not only of individual and personal conduct on the part of each of the alleged harassers, but also of the existence of a certain degree of concertation between them. In the absence of coordinated conduct among the alleged harassers, a person's failure to intervene to prevent abusive actions by others of which that person is aware does not, in principle, constitute psychological harassment on that person's part.

Further, the concept of 'conduct' (Art. 12a SR) is capable of encompassing not only active conduct but also passive conduct - such as marginalizing or excluding an official or other staff member in the workplace or in the context of working relationships - or even a failure to act. In this sense, also 'passive' psychological harassment must fulfill the condition of 'abusive conduct' and must, as such, entail a component requiring action on the part of the perpetrator, such as refusing to communicate with someone, ignoring them, or isolating them. Also a "passive" form of conduct may constitute harassment, provided that it reflects intentional, as opposed to "accidental", individual behaviour which persists over time and has the effect of infringing upon a person's personality, dignity, or physical or psychological integrity. In the concrete case, the ECJ dismisses the appeal. The ECJ finds that the GC in first instance had not erred in law. The GC had namely not excluded the possibility of a collective harassment, but considered that, factually, there was no individual and personal implication of the person who was accused of (passive) harassment.

Facts and Decision in Case *HF v EP*

Similarly, in the third case presented here, the applicant had argued that her supervisor's conduct, taken together and in context, amounted to psychological harassment and that the institution (the European Parliament) breached Art. 24 SR and the principle of good administration. The GC concluded that the Parliament did not commit a manifest error of assessment when it decided that there was no psychological harassment and therefore refused to grant full assistance under Art. 24 SR. The GC recalled that the circumstances of harassment have to be assessed overall, concretely and contextually, and that a pattern may arise from several acts that are not each abusive on their own. In light of the context of operational difficulties within the service it needs to be examined whether the alleged acts possess sufficient objective reality such that an impartial and reasonable observer, endowed with normal sensitivity and placed in the same circumstances, would deem them excessive and reprehensible. The operational difficulties within the service form part of the context in which the alleged acts took place; consequently, these difficulties could be taken into account in reconstructing the circumstances in which that observer had to be placed in order to determine how he or she would have assessed the alleged facts if he or she had witnessed them. Finally, the GC states, the fact that a civil servant has difficult, or even conflictual, relations with colleagues or hierarchical superiors does not, in itself, constitute proof of psychological harassment. The GC concluded that the preconditions for harassment were not fulfilled and dismissed the application.





Comments:

1. Every staff member has the right to work in a healthy, safe, dignified and harassment-free environment. Likewise, all staff shall refrain from any form of psychological or sexual harassment (Art. 12a SR). Art. 24 SR with its obligation to assist staff is a procedural expression of the principle of good administration (Art. 41 FRC). It contains a **duty of care** on the part of the administration, which must act with **care and caution** for the benefit of the staff.
2. The judgments in the three cases presented here remind that the institutions, under their duty to provide assistance to staff, “have to 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”. The administration is to examine a request for assistance in which harassment is alleged **seriously, expeditiously** and in **total confidentiality**; further, it has to **inform** the applicant of the outcome.
3. In practical terms, it is of importance for a victim of harassment (whether psychological or sexual) to preserve any evidence and to seek the institution’s assistance by lodging a formal **request for assistance** under Art. 24 SR in a timely manner. A request for assistance is the way to involve the appointing authority and thus invoke the obligations of the institution towards the staff employed, in order to be able to draw on and enforce these rights.
4. All cases presented here are about psychological harassment and contain important definitions of the related legal terms. The core **definition of harassment** is based on two requirements: (1) first: an abusive (or improper) conduct which takes the form of behaviours, words, acts, gestures or writings that are manifested persistently, repetitively or systematically; (2) second: those behaviours, words, acts, gestures or writings must have the effect of undermining the personality, dignity or physical or psychological integrity of a person. Only the first precondition requires the subjective element of an intention: wilful intent is only required as to the intentional commission of the acts in question, while the effect of the harassment (undermining the personality, dignity, etc.) does not have to be intended. For example, there can be psychological harassment without it being established that the harasser had any intention to discredit the victim or deliberately impair the latter’s working conditions through his conduct.¹
5. Harassing behaviour is a set of different acts spread over a period of time which, considered in isolation, would not necessarily constitute per se psychological harassment but which, viewed **as a whole** and **in context**, including because of their build-up over time, can be regarded as harassment. For that reason, facts should be examined both **individually and jointly** as part of the general working environment.
6. In Case *WU v Eurojust*, the key point was that Eurojust by dividing the (sole) request for assistance and allocating it to two different AECEs, an overall and contextual assessment of all facts complained of was not possible any more, in the opinion of the GC. By thus disregarding the potential interactions between the various persons to whom the acts were imputed, the institution did not comply with its **duty of care** inherent in the principle of good administration in the light of which it is required to implement its duty to provide assistance under Art. 24 SR.
7. Note that in Case *WU v Eurojust* the investigation preceding the decisions of the two AECEs was not itself divided in two: there was only one investigation. But nevertheless, the GC does not consider the (single) report of the investigators sufficient to account for an “overall and contextual assessment” of the facts. Because, according to the GC, that is a task of the involved appointing authorities / AECEs.
8. The plurality of persons involved in the alleged harassment was at the core of the second judgment presented here: *Colombani v EEAS*. Although the outcome was not successful for the applicant, this Case provided for the first time an opportunity for the ECJ to clarify that psychological harassment can, in principle, include **collective** and **passive** conduct:
 - a) Harassment can be committed **collectively** by several persons where they act in a **coordinated** manner. All of them would be harassers. This presupposes that their actions form part of a single, unified pattern of harassment, and a **certain degree of concertation** between the persons involved. In the absence of the element of concertation, the pure failure of a person to intervene does not amount to psychological harassment on that person’s part.

¹ Details: Mader, EU Civil Service Law (2024), pp. 132 subs

b) Also a **passive** form of conduct may constitute harassment, provided that it **reflects intentional**, as opposed to accidental, individual conduct which persists over time and has the effect of infringing upon a person's personality, dignity, or physical or psychological integrity. This means that the central questions in harassment with the involvement of several persons are, first, whether a conduct is *coordinated or not*. This primarily decides about whether someone is or not involved in an ongoing harassment by someone else. In the second place, also passive behaviour (not coordinated) can amount to harassment, but only where the bystander him/herself shows an intentional **reflex** of the (also intentional) individual conduct of a harassing person. Though the ECJ does not specify this constellation further, it can be assumed that, in practice, this means that the 'passive' person would have to signal some own consent with an ongoing harassment committed by someone else. Note that the precondition of intentional conduct is not a new requirement, it might just be more difficult to prove the intention in the event of a 'passive' behaviour.

9. In the third Case presented here, *HF v EP*, the GC sets out the framework in which a harassment conduct under real life conditions has to be assessed. It applies an objectivised standard in which the context of organisational difficulties and a conflictual relationship between the applicant and the head of unit were taken into account. The test to apply is if an objective, i.e. an "**impartial and reasonable**" observer, "endowed with **normal sensitivity** and placed in the **same circumstances**", would deem the acts "**excessive and reprehensible**". The GC specifies that the mere fact that a civil servant has difficult, or even conflictual, relations with colleagues or hierarchical superiors does not, in itself, constitute proof of psychological harassment. This means at the same time that the GC in this case considers 'excessive and reprehensible' acts as the yardstick for the abusive conduct which is the first precondition of the term *harassment*.

10. As mentioned in an earlier [StaffMatters newsletter on Case T-158/23](#), *Colombani v EEAS*, where a request for assistance has been lodged against alleged psychological harassment followed by a decision-making process, this can point to a lack of impartiality in the decision-making, e.g. in an appraisal exercise, permitted there is reasonable suspicion (*prima facie* evidence) that a breach of discipline (harassment) has been committed. The three cases presented in this newsletter here above suggest that also scenarios of alleged harassment can substantiate a potential lack of impartiality, permitted that the request for assistance leads to the opening of an administrative inquiry. Because that opening of inquiry would already demonstrate that there is enough *prima facie* evidence. The consequence of a *prima facie* evidence is that the test of objective impartiality in the appraisal exercise is whether there was a "legitimate doubt [of bias] which cannot be dispelled".



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