

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 285/2001 – Andrée PARIENTI v. Secretary General

The Administrative Tribunal, composed of:

Mr Kurt HERNDL, Chair,
Mr José da CRUZ RODRIGUES,
Mr Helmut KITSCHENBERG, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar, and
Mrs Claudia WESTERDIEK, Assistant Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. Ms Andrée Parienti lodged her appeal on 29 August 2001. The appeal was registered on 31 August as file no.285/2001.
2. The appellant's representative, Mr Jean-Pierre Cuny, lodged observations on 24 September 2001.
3. In the meantime, on 14 September 2001, the Secretary General's representative had asked the Tribunal to suspend the proceedings until the appellant had been informed of the results of the administrative inquiry into her allegations, which was still ongoing. In a letter of 2 October 2001 the Deputy Registrar of the Administrative Tribunal informed the parties that the Chair of the Tribunal had decided to grant the Secretary General's request and suspend the proceedings until 5 October.
4. On 5 October 2001 the Secretary General notified the Tribunal of the results of the administrative inquiry. On 25 October the appellant sent the Tribunal a copy of her response to the administrative inquiry.
5. When proceedings resumed on 28 November 2001, the Secretary General lodged his comments on the appeal. The appellant submitted her comments in reply on 18 January 2002.

6. A first public hearing of the appeal was held in the Administrative Tribunal courtroom at Strasbourg on 25 March 2002. The appellant was represented by Mr Cuny and the Secretary General by Mr Jörg Polakiewicz, then deputy head of the Legal Advice Department, Directorate General I – Legal Affairs.

7. In a decision of 3 April 2002 the Chair of the Administrative Tribunal, granting a request which Mr Cuny had made in his oral submissions, asked Dr Marie-France Patris, a court expert working as a psychiatrist at the Centre Hospitalier Spécialisé in Brumath, for a written report firstly evaluating the appellant's state of health when she ceased work in July 2001 and thereafter, regard also being had to any changes in her state of health since late 1997/ early 1998; and secondly on whether the harassment which she claimed to have suffered might have damaged her health and whether there was any medical evidence of occurrences amounting to harassment or of a causal link between the deterioration in her health and any such occurrences. The report, dated 19 August, was received at the Tribunal registry on 21 August 2002 and was forwarded to the parties. On 20 September 2002 the appellant submitted her written comments on the report. The Secretary General submitted his comments on 23 September.

8. A second public hearing was held in the Administrative Tribunal courtroom at Strasbourg on 18 December 2002 to allow the parties to present their submissions on the report. The appellant was represented by Mr Cuny and the Secretary General by Mr Patrick Titium, administrative officer in the Legal Advice Department, Directorate General I – Legal Affairs.

THE FACTS

9. The appellant is a former member of the Council of Europe staff. She joined the Organisation as a grade B3 permanent member of staff in 1976 and was promoted to grade B4 on 1 February 1997, after the post she occupied in the Council of Europe's official journeys service was upgraded. Her chief duty was liaison with the travel agency located in the Council of Europe building.

10. From the end of 1997 (when the official journeys service was reorganised) onwards, and following changes in the hierarchy and the staff she worked with, she experienced difficulties at work. In a decision of 27 September 1999 she was seconded to the Human Resources Department (now the Human Resources Directorate) from 1 October to 31 December 1999. In November and early December 1999 she underwent training outside the Organisation.

11. In a memorandum to the Deputy Secretary General of the Council of Europe dated 16 December 1999, referring to an offer of a transfer to the Council of Europe's Paris office, she complained of her work situation and suggested that if the Paris position failed to materialise and another was not forthcoming, she be allowed to take early retirement with an indemnity for loss of job or cessation of employment, this solution being "the most appropriate in [her] present circumstances". The move to Paris did not materialise and she was transferred to the Human Resources Department on 6 March 2000. In a decision of 5 March 2000 her secondment was extended for a period of six months from 1 January 2000.

12. On 3 July 2000 she lodged a complaint under Article 59 of the Staff Regulations in which she asked firstly for a stop to be put to the psychological harassment she claimed to have been suffering since December 1997/January 1998, which constituted an affront to her human dignity, and secondly for her administrative situation to be set on a proper footing and her job responsibilities clarified.

13. On the same date the Director General of Administration and Logistics sent her the following memorandum:

“With reference to your discussions with Mr Wendelbo, I can confirm that the Secretary General has in mind to terminate your employment with effect from 31 December next in accordance with Appendix VI to the Staff Regulations on indemnity for loss of job, since the Secretariat reorganisation means that the responsibilities attaching to the post which you hold have been substantially modified and no longer match your qualifications.

I note that in the course of your discussions you indicated your agreement in principle to this termination of your employment.

However, before taking a final decision the Secretary General will be seeking the opinion of the Joint Committee ...”

14. On 7 July 2000 the appellant replied as follows:

“With reference to the aforementioned letter, I:

- a. wish to point out that my “agreement in principle” to this termination of my employment was the result of the very difficult situation I was in at the time, and the proposal that seemed to me to be the least painful solution;
- b. deplore the fact that the responsibilities attaching to my post were “substantially modified” without any official notification ever being given to me;
- c. note from your terminology that consulting the Joint Committee does not involve requesting an opinion which might influence the final decision but is simply an information measure.

That being so, I reserve the right under the Staff Regulations to oppose, if necessary, any decision you are preparing which is inconsistent with the Staff Regulations, general principles of law (including staff members’ right to information) or natural justice.”

15. In an e-mail of 11 July the head of Human Resources reported to the Director of Administration and Logistics on the conversation he had had with the appellant that day. She had told him of her meeting with the head of the Secretary General’s Private Office, at which it had been agreed that she would leave the Organisation on 31 July 2001. When the head of Human Resources had asked her about it she had assured him, he said, that pending her departure she would be happy to go on working in the Human Resources Department, where she had interesting work in connection with recruitment competitions and equal opportunities. Allegedly she had said that she “did not want to make a big legal issue of it” and had thus decided that “subject to agreement on 31 July 2001 as the date of her departure, she would withdraw her complaint”.

16. On the same day the appellant sent the following memorandum to the Director of Administration and Logistics:

“Further to my memorandum of 7 July 2000 on giving me the benefit of Appendix VI to the Staff Regulations and to my conversation today with the head of the Secretary General’s Private Office, Mr Kleijssen, I confirm that I am happy to have my

employment terminated as of 31 July 2001 on the terms offered and in accordance with Appendix VI to the Staff Regulations on indemnity for loss of job.

This is of course on the understanding that in the meantime I am found a post and duties within the Secretariat that are appropriate to my grade, indicating that my complaint of 3 July 2000 under Article 59 of the Staff Regulations has been considered and to some degree responded to.”

17. On 12 July 2000 the Director of Administration and Logistics replied as follows:

“Thank you for your memorandum of 11 July stating that, provided the date is put back to 31 July 2001, you accept the Secretary General’s plan to apply the rules on indemnity for loss of job.

I can confirm that the Secretary General is prepared to accommodate your wishes and agrees to the later date of 31 July 2001.

I also appreciate your wish to be given duties appropriate to your grade. I shall instruct the Head of Human Resources to assign you to a position in which, albeit temporarily, you will have work that matches your qualifications and is of value to the department.”

18. In a decision dated 17 July 2000 the appellant was seconded to the Human Resources Department for a further six months from 1 July.

19. In a memorandum dated 24 October 2000 the head of Human Resources sent her the following note:

“Further to our discussions I confirm that up to the end of July next year, when your employment with the Organisation will end, you will work in the Equality Unit in the Human Resources Department. Your manager will be Monique Chalude, who will allocate you the specific duties you will be performing during that period.”

The decision to second the appellant to the Human Resources Department for the period 1 January to 31 July 2001 was taken on 16 January 2001.

20. On 6 July 2001 the appellant lodged a second complaint, which reached the Administration on 9 July, alleging that she had been subjected to psychological harassment since December 1997. She accused the Secretary General of having failed in his duty of protection and of having infringed Article 30 of the Staff Regulations in regard to her. She interpreted Article 30 to mean that the Administration was required to keep an eye on the content of jobs given to staff, and this had not been done in her case. She also claimed that the situation had affected her mental and physical health.

21. Following an acknowledgment of receipt dated 9 July 2001 the Secretary General informed the appellant in a letter of 18 July 2001 of his decision to ask the Director of Human Resources to conduct an administrative inquiry as soon as possible.

22. On 4 October 2001 the administrative inquiry conducted in the Human Resources Directorate in response to the appellant’s complaint was completed. After hearing the main individuals to whom the appellant had referred, the then head of People Development, Mr A. Butler, drew up a chronological record based on the appellant’s grievances and covering

the periods from the end of 1999 to March 2000 (two job offers in March), from mid-July to early September 2000 (repeated absences of the appellant on annual leave and sick leave), from September to October 2000 (an initial description of her recruitment duties; a work plan dividing her duties between assisting the Equality Unit and making travel arrangements for candidates in recruitment competitions) and from November 2000 onwards (a meeting in November 2000 with staff of the Equality Unit and Recruitment Unit to draw up a job description; a misunderstanding about the allocation of work which led to her being subjected to a verbal attack on 4 December 2000). Mr Butler reached the following conclusions:

“The first conclusion of my inquiry is that the appellant’s colleagues in the Human Resources Department did everything they could to offer her interesting work in the department. The above examples show the efforts made throughout 2000 to involve her in a series of initiatives. The inquiry reveals that at times she had a choice of up to three offers. The criticism may be levelled at HRD that its coordination of this was poor, but it is clear that the appellant never lacked offers of interesting and fulfilling work.

Unfortunately (and this is not discernible from the few official records for this period, but emerges from the repeated testimony of those who sought to help her) the appellant’s interest in and enthusiasm for each of the initiatives in which she was involved were short-lived – it was never long before she encountered some obstacle or other which prevented her from continuing and developing the work. Sometimes the people trying to help her met with responses which deterred them from helping her further.

Thus, as one failure followed another, sympathy gradually evaporated and the appellant gained a reputation for being unreliable. This may explain her feeling of being left to her own devices from early 2001 onwards. But even at this time there was no shortage of work.

I have taken evidence from colleagues who felt sorry for her and tried to help. She told these people, sometimes by e-mail, sometimes on paper, that she was grateful for their efforts on her behalf and that she found the work she had been offered or was engaged in interesting. They find it hard to understand why she is now making accusations against them.

My second conclusion is that, in its official reaction to the appellant’s situation, Human Resources opted for *ad hoc* solutions which her colleagues and friends suggested and she found acceptable rather than formally and officially defined ones which did not necessarily fit in with departmental realities.

The head of department regarded himself as a close friend of the appellant. This made things difficult when he had to respond formally to her complaints. He took the view that ‘his door was always open’ and that she could see him whenever she wanted in order to resolve problems face to face rather than waiting for his official response and suffering as a result.

Notwithstanding this, and this is my third conclusion, the Human Resources Department fulfilled its obligations towards the appellant: I have found at least two job descriptions which were drawn up with her agreement and matched her grade. The testimony referred to proves, moreover, that she was always consulted on the types of work she was being asked to do. The department respected her decisions to accept or decline them or to drop some of the dossiers she had begun work on.

The department also acceded to a number of requests by the appellant for assistance, with training in particular, firstly by redeploying her within the Organisation and later by helping her in her preparations for finding employment after she left.

On the basis of these findings it is my view that the allegations of psychological harassment which the appellant makes in her complaint of 6 July are unfounded.”

In a postscript to these conclusions Mr Butler wrote:

“I think it is important to consider another possibility, based on my discussions with people acquainted with the appellant, which is that any attempt by the Human Resources Department to provide her with duties she would be happy with was doomed to founder on an immovable obstacle – the true source of her discontent – namely a real and deep-seated reluctance on her part to accept early termination of her employment.

Clearly such a conclusion is outside the scope of this administrative inquiry. But it might provide a better explanation of the appellant’s behaviour and the failure of the attempts to help her.

Likewise it is clear that the problems arising during the period relevant to this complaint (July 2000 to July 2001) stem from the problems raised in her earlier complaint which were not fully resolved.”

23. The appellant subsequently submitted her comments, challenging the findings of the inquiry.

24. On 19 August 2002 the expert appointed by the Tribunal, Dr Patris, delivered her report (see paragraph 7 above). This first outlines the appellant’s case history and lists the medical documents the Tribunal and the appellant made available to her. It then summarises the appellant’s grievances and fills in the personal background. This is followed by the findings of the psychiatric examination. In her detailed psychiatric evaluation the expert says, *inter alia*, that the appellant, who did not continue in formal education after her baccalaureate examinations, made a career for herself by dint of hard work. She secured a responsible post at the Council of Europe in which she was largely unsupervised up to 1997, at which point she was faced with a reorganisation carried through by her line superiors. According to the expert “this reorganisation, probably pushed through without tact or consideration, was a stressful and traumatic experience for Ms Parienti, prompting defensive inflexibility and a sensitivity in personal relationships which led her to view the attitude of her line superiors as persecution, with genuine depressive decompensation confirmed by the various psychiatrists and general practitioners who treated her during that period.” Her conclusions are as follows:

“My examination of Ms Parienti for this report enables me to rule out severe personality disorders or any chronic mental illness, in particular of a delusional type.

Examination of the medical evidence available to me shows that from late 1997-early 1998 onwards Ms Parienti, against a background of difficulties at work, clearly suffered from decompensatory anxiety and depression, which the doctors treating her diagnosed at the time. She blames these and her physical health problems on the psychological harassment she claims to have been subjected to. Psychological harassment of the kind

she describes (and as a result of which she ended up losing her job) is perfectly capable, as she alleges, of causing major psychological trauma and damaging her mental health.

From the medical findings of the doctors who have treated her it can be seen that there is a link between Ms Parienti's difficulties at work and the deterioration in her health."

THE LAW

25. Since the Secretary General did not rule on her complaint in his memorandum of 18 July 2001, the appellant lodged the present appeal against the implicit rejection of her complaint on 9 August 2001.

26. She asks the Tribunal to rule that the Secretary General infringed a number of general principles of law in regard to her and that he did not adequately protect her from the psychological harassment she says she suffered from the end of 1997 up to the time of her departure (31 July 2001). She seeks appropriate compensation – which she puts at 450 000 French francs (68 600 euros) – for non-material and professional injury and for the damage to her health, and requests the sum of 24 000 French francs (3 660 euros) to cover all the costs of this appeal.

27. The Secretary General maintains that the appellant has not established that he infringed any relevant provision or any general principle of law. Consequently he asks the Tribunal to declare the appeal unfounded and to dismiss it on that ground.

A. ADMISSIBILITY OF THE APPEAL

1. The alleged prematurity of the appeal

28. The Secretary General contends that the appellant took her complaint to the Tribunal prematurely, without waiting for the ongoing administrative inquiry to be completed. It had been his intention to await the outcome of the inquiry before deciding on his position.

29. In the appellant's view there is no ground, under Article 59(3) of the Staff Regulations, on which the Secretary General is entitled to request a longer time limit for responding to a complaint. Under the Staff Regulations, holding an inquiry into her allegations did not give him more time to reach his decision.

30. The Tribunal notes that Article 59(3) of the Staff Regulations reads:

"The Secretary General shall give a reasoned decision on the complaint as soon as possible and not later than thirty days from the date of its receipt and shall notify it to the complainant. If, despite this obligation, the Secretary General fails to reply to the complainant within that period, he or she shall be deemed to have given an implicit decision rejecting the complaint."

31. The Tribunal points out that the disputes procedure laid down in Articles 59 and 60 of the Staff Regulations stipulates that the administrative complaints and appeals which staff members may lodge against administrative acts adversely affecting them must comply with certain time limits. The formalities and procedures laid down in the Staff Regulations are designed to ensure observance of the principle of legal certainty inherent in the Council of

Europe system, in the interests of both the Organisation and its staff (see ATCE No 284/2001, *Lobit-Jacquin v. Secretary General*, decision of 27 March 2003, paragraph 21).

32. Observance of the principle of legal certainty requires that the time limit after which the Tribunal may no longer review an administrative act be a known date. The same applies to the time limit within which the Secretary General must rule on a complaint, since the period for lodging an appeal runs from a complaint's explicit or implicit rejection. The purpose of this time limit is to prevent the Secretary General's non-response from impeding recourse to the legal remedies. The Tribunal notes that the only exception is laid down in Article 59(4), namely referral of the complaint to the Advisory Committee on Disputes. A time limit of thirty days then runs from the date on which the Advisory Committee's opinion is received.

33. As a result the Secretary General's justified decision, communicated on 18 July 2001, to hold an inquiry into the appellant's allegations of psychological harassment did not interrupt the period laid down in Article 59(3). The findings of the inquiry were in fact presented at the start of the appeal proceedings, within a time limit set by the Chair (see paragraphs 3 and 4 above).

34. Consequently, the Secretary General's argument that the appellant referred her complaint to the Tribunal prematurely must be rejected.

2. The alleged lateness of the appeal

35. The Secretary General contends that only the alleged persistent psychological harassment can form the subject of this appeal and only to the extent that it continued after the appellant was transferred to the Human Resources Department, more specifically after 3 July 2000, the date of her first complaint, which she did not follow up.

36. Regarding the application of Articles 59 and 60 of the Staff Regulations in cases of psychological harassment, the Secretary General believes that a proper balance has to be struck between the requirements of legal certainty and the interests of staff who believe themselves to be victims of harassment. To ensure that victims of psychological harassment are given proper legal protection, the Secretary General accepts the possibility of lodging a complaint for harassment with a time limit longer than thirty days. But in the case of specific administrative measures alleged to affect the staff member adversely within the meaning of Article 59, the measures have to be challenged within the time limit set in Article 59(3). The appellant, he argues, cannot use an appeal alleging psychological harassment to challenge individual measures of that nature such as the decision to terminate her employment as from 31 July 2001 or her secondment to Human Resources.

37. In addition, since the appellant did not follow up her first complaint of psychological harassment, any further complaint concerning measures, occurrences or alleged omissions on the part of the Secretary General prior to that complaint of 3 July 2000 is time-barred in the Secretary General's view.

38. The appellant agrees with the Secretary General that the facts of her case are those which occurred between 3 July 2000 and 31 July 2001, but she argues that, whilst there can be no question of her challenging administrative measures prior to that period, the background facts nevertheless make it easier to understand the scale and significance of what happened during the period. In any event, she submits, harassment is perverse behaviour in which the time factor is important and whose existence is apparent only after a certain length of time. That being so, a limitation period in respect of legal measures cannot be acceptable in matters of harassment.

39. The Tribunal notes that the concept of psychological harassment has a time component. For example, the definition given in Article 3 of Instruction No.44 of 7 March 2002 on the protection of human dignity at the Council of Europe includes “any sustained, repetitive and/or systematic conduct in the workplace or in connection with work”. It has also been recognised in international case law that “there [is] nothing to prevent [a] complainant from citing an accumulation of events over time to support an allegation of harassment” (see ILOAT, judgment of 12 July 2001, No.2067, Annabi case (No. 2), paragraphs 5 and 16, and judgment of 30 January 2002, No.2100, Guastavi case, paragraph 13).

40. In the present case the appellant relates occurrences which go back to the end of 1997, when she held a post in the official journeys department. The Tribunal notes that the psychological harassment she claims to have suffered thereafter, and her work situation after she was seconded to the Human Resources Department, were already the subject of a first complaint lodged on 3 July 2000 (see paragraph 12 above). At the same time the Director of Administration, acting on a suggestion by the appellant herself, confirmed that the Secretary General planned to terminate the appellant’s services at 31 December 2000, in accordance with Appendix VI to the Staff Regulations on indemnity for loss of job (see paragraphs 11 and 13 above). Her leaving date was then put back to 31 July 2001 and she agreed to the proposal that Appendix VI be applied to her on condition that she was given found a post and duties within the Secretariat which matched her grade. She also acknowledged that her “complaint of 3 July 2000 pursuant to Article 59 of the Staff Regulations [had] been considered and to some degree responded to” (see paragraph 16 above).

41. It is apparent from these facts that the appellant successfully availed herself of her right, under Article 59(2) of the Staff Regulations, to complain to the Secretary General and that she agreed to various measures, notably an indemnity for suppression of her post after 1 August 2001, which were designed to remedy her situation.

42. She is thus time-barred, in the present proceedings, from relying on matters which formed the basis of her first complaint or on the decisions taken to deal with the grievances concerned, even though formally the proceedings are concerned with the period from July 2000 to July 2001 (see, *mutatis mutandis*, ATCE Nos 258/2000 and 261/2000, Ballester v. Secretary General, decision of 31 January 2002, paragraph 49).

43. Consequently, the preliminary objection raised by the Secretary General is founded in that the Tribunal considers itself competent to examine only the allegation of psychological harassment which the appellant claims to have suffered from July 2000 onwards.

B. MERITS OF THE APPEAL

44. The appellant contends that the Administration infringed the general principle of good faith and thwarted her legitimate expectations. In the memorandum of 12 July 2000 she was given a precise promise – of duties within the Human Resources Department – but the Administration never followed up on it. She maintains that withdrawal of the complaint lodged on 3 July 2000 and her agreement to the early termination of her employment, together with the assurances that, in accordance with her dignity as an employee, she would be given duties appropriate to her grade and experience, were all part of a compromise reached between her and the Administration.

45. The appellant also deplores the fact that her complaints of psychological harassment were not heeded and that after she withdrew her first complaint the harassment continued, albeit in a slightly different form. Referring to Article 40 of the Staff Regulations and to Instruction No.35 of 15 July 1997 on the protection of human dignity at the Council of Europe, she believes that the Organisation failed in its obligation to afford her appropriate protection against such attacks on her dignity and reputation.

46. More specifically, she claims that after being seconded to the Human Resources Department from 1 July 2000, the head of department at the time never called her in for a serious and thorough discussion of the duties she was to undertake, even though personal relations between the two of them were excellent. She claims to have tried in vain to obtain guidance. It was only in October 2000 that the equality advisor raised with her “the possibility of doing something” in the Equality Unit. Subsequent to the memorandum of 30 October 2000 on her assignment to that unit she claims never to have been given any oral or written description of her duties. She says that there were just two draft job descriptions, one which she had drawn up herself and another which was never officialised. In her view it was particularly important that a job description be drawn up in proper form and that checks be run to verify that the actual duties matched that description.

47. She further claims that the head of unit’s assistant obstructed all her requests for help and, in a further totally unprovoked show of hostility, verbally attacked her on 4 December 2000. Her superiors took no action on the quarrel. It was thus on her own initiative that she sought and was given a position in the competitions and recruitment department where her specific remit was to make travel arrangements for candidates called to various competitions and to invigilate at examinations. These duties, although part of the general work of travel organisation, were in no way comparable with those she had performed in her old job. This “dead-end posting”, she says, led to further bouts of depression. She put in the time – periods of sick leave alternating with periods in the office and nothing to do – until the day she left the Organisation.

48. She maintains that these work arrangements, unlawfully and negligently forced on her by the Administration, were the cause of the alleged psychological harassment. In her view the psychological harassment was an extension of the negative attitude which her line superiors had displayed since the end of 1997, as she believes the report by the psychiatric expert confirms. She makes the point here that Dr Patris is both a highly specialised hospital practitioner and an expert in the presentation and analysis of legal documents. She believes the psychiatric report to be totally in keeping with what one would expect of an expert of this standing. In the appellant’s view it is inappropriate to criticise the expert’s methods. The expert focused on her explanations in order to determine, from the interview, whether they were consistent and her allegation of harassment credible.

49. For these reasons the appellant maintains that the Organisation damaged her by infringing Articles 11 and 30 of the Staff Regulations, which embody the general principle of law that any international organisation has an obligation to assign duties to its staff members. The absence of any visible effort to assign her a well-defined post with a specific set of duties was a serious infringement of her rights.

50. She asserts that these shortcomings had repercussions on her mental health and caused recurrent depression. It should have been easy for the Administration to link her repeated absences from work to her professional circumstances. She regards the expert’s findings as

showing that there was medical evidence of occurrences which amounted to harassment and that the harassment was such as to damage her health.

51. The Secretary General contends that she was continually offered or assigned adequate duties that matched her grade and skills. He contends that she has provided no evidence of psychological harassment or a causal link between her work situation and her state of health.

52. Regarding her charge that the Administration infringed the principles of legitimate expectations and good faith, he points to the findings of the administrative inquiry as confirmation that he acted on his undertaking to assign her duties which, although of course temporary, provided work that matched her qualifications and was of value to the department (see memorandum from the Director of Administration dated 12 July 2000). He refers here to the two job descriptions drawn up with her agreement and to her various duties, all of which, he says, accorded with her grade. Having agreed to early termination of her employment, she could hardly expect to be given permanent duties. It was in the departmental interest that her duties tended to be of an occasional and temporary nature.

53. In the matter of psychological harassment the Secretary General explains that, before the entry into force of Instruction No.44 of 7 March 2002 concerning human dignity at the Council of Europe, he applied Instruction No.35. The administrative inquiry yielded no confirmation of the appellant's allegations. On the contrary it revealed that the appellant's colleagues had tried to help her and had shown no ill will towards her. The then head of department had consistently been available to resolve problems face to face rather than through official channels. Having always consulted the appellant on the types of work she was being asked to do, the department had abided by her decisions to accept or decline them or to drop some of the dossiers she had begun work on. The verbal attack on 4 December 2000 was simply a misunderstanding between two staff members and no kind of harassment could be inferred from it.

54. Regarding the expert report by Dr Patris, the Secretary General regrets that it is not a document calculated to shed light on the complex facts of this case. First of all, he maintains, the report, based solely on the appellant's side of the story, is not objective and contains errors. Secondly it concentrates on events during the period 1997-1999, so its findings do not indicate whether the appellant suffered psychological harassment during the period July 2000 to July 2001. On balance the probability, he suggests, is that the events of 1997-98 rendered her particularly sensitive to the slightest disturbance or malfunction in her working environment. In the Secretary General's view the tensions and conflicts between colleagues which occurred during her time in the Human Resources Department never spilt over into psychological harassment as defined at the Council of Europe.

55. On the basis of his broad powers for appraising the organisation of his departments, the Secretary General considers that transferring the appellant did not constitute a demotion and that Article 11 of the Staff Regulations, taken with Article 2(1) of the Regulations on Appointments, was fully complied with. The appellant's new post allowed her to make full use of her knowledge and experience. There is no indication that she was deprived of work during the period covered by the appeal.

56. The Secretary General adds that there is nothing to suggest that the appellant's work situation contributed to or led to her depression.

57. The Tribunal observes that Articles 1 and 2 of Instruction No.35 of 15 July 1997 on the protection of human dignity at the Council of Europe read as follows:

“Article 1

All conduct infringing the dignity of women and men in the workplace and working relations shall be eliminated at all levels of the Council of Europe.

Article 2

Everyone working in the Secretariat, irrespective of status and employment contract, has the right to respect for their dignity and in particular to effective protection against sexual harassment, whoever the person engaging in such conduct.”

This instruction was superseded by Instruction No.44 of 7 March 2002, the relevant passages of which read:

“Article 1

All conduct infringing the dignity of women and men in the workplace and/or in connection with work at the Council of Europe shall be prohibited.

Article 2

Everyone working at the Council of Europe, regardless of status or employment contract, has the right to effective protection against sexual and psychological harassment, irrespective of the person perpetrating such conduct.

The provisions of this Instruction shall apply to all staff members of the Council of Europe whether or not carrying out their functions, and wherever they are called upon to work.

Article 3

Definitions

...

Psychological harassment

Psychological harassment is any sustained, repetitive and/or systematic abusive conduct in the workplace or in connection with work in the form of behaviour, actions, gestures, spoken or written words, threats or working organisation methods which, intentionally or otherwise, is prejudicial to a person’s personality, dignity or physical or mental integrity; which causes a deterioration in the working environment or endangers that person’s employment or creates a hostile, intimidating, degrading, humiliating or offensive environment.”

58. The Tribunal holds that an allegation of harassment must be borne out by specific facts, the burden of proof being on the party pleading the harassment (see ILOAT, Annabi (No.2), cited above, paragraph 5; and Guastavi, cited above). It also holds that the Administration must respect staff members’ dignity and reputation in its dealings with them, in other words avoid putting them needlessly in difficult personal positions (see ATCE No.266/2001, Girasoli v.

Secretary General, decision of 12 October 2001, paragraph 37; ILOAT, judgments of 24 April 1980, No.396, Guisset case, paragraph 5, and 13 March 1986, No.809, Najman case (Nos 1 and 4), paragraph 20; see also ABCE No.77/1981, decision of 11 June 1982, Vangeenberghe v. Secretary General, paragraph 44).

59. The psychiatric expert, after listening to the appellant, contacting one of the doctors who had treated her and acquainting herself with the full details of her case, has not succeeded in establishing the existence of medical evidence that the deterioration in the appellant's state of health was influenced by events occurring between July 2000 and July 2001. Whilst the expert refers to the appellant's complaints that she had suffered continuous psychological harassment from her line superiors since 1997, it is evident from the findings that she is convinced the appellant's health problems originated in the work difficulties she experienced in late 1997-early 1998 (see paragraph 24 above). But these are matters which must be discounted since they go back to before July 2000, the start of the period covered by this appeal.

60. The Tribunal points out that when it approached the psychiatric expert it made it clear that the expert's report should address the appellant's state of health and the question of a causal link between the harassment she claimed to be suffering and the deterioration in her health. It finds that the expert's report contains information which is relevant to an understanding of the appellant's situation. It sees no reason to doubt the work of the expert or the validity of her findings.

61. Regarding efficient organisation of his services, the Secretary General has a general obligation to avoid situations where a staff member is assigned to a department without being given precise duties there. In the present case the Tribunal takes the view that, given the appellant's background and the commitments given by the Administration when it extended her secondment to the Human Resources Department in July 2000 (see paragraph 17 above), the Secretary General had an increased responsibility towards her. It was also necessary to find her temporary duties that would keep her busy for the twelve months until the provisions of the Staff Regulations on indemnity for loss of job took effect. It should be noted that it was at the appellant's request that the period was extended from 31 December 2000 to 31 July 2001.

62. The Tribunal concludes from the file that the Organisation took reasonable steps to find suitable work for the appellant. It notes, in the light of the administrative inquiry, which was conducted with the requisite objectivity, that she was given responsibility during the period in question for travel arrangements of candidates attending recruitment competitions, work which matched her career profile, together with a number of auxiliary duties in the Equality Unit. There may have been a measure of negative reaction towards the appellant and, as the inquiry found, "poor coordination of initiatives", primarily the absence of any formal description of her duties, but the appellant certainly received support from her line superiors in the Human Resources Department (see paragraph 22 above). In any event it is not for the Tribunal to judge the advisability of a given measure which the Secretary General takes in the interests of organisational efficiency (see *Girasoli v. Secretary General*, cited above, paragraph 24).

63. The Tribunal also finds that the conclusions of the administrative inquiry and the psychiatric report agree, in substance, that the appellant's work history resulted in "defensive inflexibility and a sensitivity in personal relationships which led her to view the attitude of her line superiors as persecution" (see paragraph 24 above).

64. In the circumstances the appellant has not provided any evidence that she was the victim of psychological harassment during her period with the Human Resources Department, between 1 July 2000 and 31 July 2001.

65. It thus follows that the Organisation did not fail in its duty to treat her with dignity and avoid needlessly placing her in positions of personal difficulty. Consequently it neither failed in its duty to assist her nor infringed the other principles to which she makes reference.

66. As a result no illegality is to found in the case.

For these reasons, the Administrative Tribunal:

Rejects the Secretary General's contention that the appeal was premature;

Rules that, because of the lateness of the appeal, it is not competent to rule on the substance of the appellant's grounds of appeal other than her allegation of psychological harassment in the Human Resources Department during the period 1 July 2000 to 31 July 2001;

Declares the appeal unfounded;

Dismisses it ;

Orders that each party bear its own costs.

Delivered in Strasbourg on 16 May 2003, the French text being authentic.

Deputy Registrar of the
Administrative Tribunal

Chair of the
Administrative Tribunal

C. WESTERDIEK

K. HERNDL