Organisation internationale du Travail
*Tribunal administratif*

International Labour Organization
*Administrative Tribunal*

*Registry's translation,
the French text alone
being authoritative.*

**B. (No. 2)**

***v.***

**Eurocontrol**

**138th Session** **Judgment No. 4820**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr É. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 7 February 2022, Eurocontrol's reply of 5 September 2022, the complainant's rejoinder of 2 December 2022 and Eurocontrol's surrejoinder of 3 March 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decisions to dismiss his moral harassment complaints, and claims compensation for the injury which he considers he has suffered.

Certain facts relevant to this case are set out in Judgment 4513, delivered in public on 6 July 2022, concerning the complainant's first complaint. Suffice it to recall that on 1 December 2013 the complainant was appointed by Eurocontrol as a graduate official at grade AD5. Pursuant to Annex Xa to the Staff Regulations governing officials of the Eurocontrol Agency – which sets out the special provisions of the Staff Regulations applicable to graduates – his appointment was for an initial period of 25 months, including a probation period of 13 months,

convertible, at the end of this period, into an appointment for an undetermined period or, at least, for a limited period. For the probation period, and then for each subsequent assignment, a host manager was to be designated to ensure that the assignment progressed properly. A mentor was also to be designated for the entire period of service.

Having successfully completed his probation period, on 1 January 2015 the complainant began an assignment in another service as an official with a limited-term appointment. Although an appraisal report was not drawn up for 2015, his appointment was renewed for 2016. On 26 September 2016 the Performance Board met and, noting the complainant's poor performance in 2015 and 2016, recommended that his appointment be terminated when it expired. However, on 27 October 2016 the Directorate of Resources proposed that the complainant's appointment be extended by one year and that a specific development plan and close monitoring be set in place. Accordingly, on 2 December 2016 the complainant's appointment, still as a graduate, was extended on an exceptional basis for a final period expiring on 31 December 2017. The complainant's appraisal report for 2016, which was eventually drawn up in May 2017, reflected unsatisfactory performance.

On 30 October 2017, on the basis of a new recommendation from the Performance Board of the same date, the Director General decided not to convert the complainant's appointment and to terminate it as from 31 December 2017 on the ground that his performance was unsatisfactory.

On 20 December 2017 the complainant filed an internal complaint with the Director General against that decision under Article 92(2) of the Staff Regulations. In that complaint, he also requested that an investigation be launched into "the conduct and actions"[*] of his host managers for the years 2015 and 2016, namely Mr H.B. and Mr P.H., whom he accused of moral harassment against him. The Joint Committee for Disputes, which met on 5 February 2018, found unanimously that the complainant had an expectation that his

[*] Registry's translation.

appointment would be converted and should be reinstated in the last service to which he had been assigned, which had expressed a need for staff with the complainant's profile. With regard to the allegations of moral harassment, it considered that the Administration was required to initiate a procedure under Rule of Application No. 40 concerning harassment, as defined in Article 12a of the Staff Regulations.

By a letter of 4 October 2018, the Head of the Human Resources and Services Unit at Eurocontrol, Ms S.D., informed the complainant of the decision, taken by delegation of authority from the Director General, to dismiss his internal complaint as unfounded insofar as it concerned the Director General's decision not to convert his appointment. She reviewed the complainant's entire assessment process in detail and considered that the decision not to convert his appointment was lawful and duly justified. With regard to the allegations of harassment, he was told that the head of the service in charge of psychosocial risks would contact him. That was the impugned decision in the complainant's first complaint, which led to Judgment 4513. In that judgment, the Tribunal ordered the setting aside of the decisions not to convert and to terminate the appointment, ordered the Organisation to pay the complainant compensation in the amount of 65,000 euros for the injury, both material and moral, suffered, and further awarded him the sum of 2,000 euros for the delay in the internal appeal procedure.

On 27 March 2019 the head of the service in charge of psychosocial risks, Ms A.D., wrote to the complainant to inform him of the steps to take should he wish to file a formal harassment complaint. To that end, she attached to her email a copy of the above-mentioned Rule of Application No. 40. By a letter of 12 April, copied to the Director General, the complainant's counsel replied that the facts allegedly constituting harassment had already been cited in the internal complaint of 20 December 2017, as well as in the first complaint that his client had brought before the Tribunal, and that the step taken by the Organisation appeared dilatory. He submitted that these acts should constitute a formal harassment complaint, and requested that the procedure for dealing with this complaint be implemented and that an investigation be conducted in this regard, as the Joint Committee for

Disputes had recommended in an opinion delivered on 5 April 2018. On 20 May 2019 the complainant's counsel wrote directly to the Director General to inform him that his client's complaint had not been dealt with and that, in his view, the head of the service in charge of psychosocial risks "had preferred to evade [the aforementioned] complaint on the basis of procedural arguments for which she [wa]s neither responsible nor competent"*. He requested the communication of statistics showing "the action taken by the [Organisation] to deal with harassment complaints [...] relating to the past [five] years"*. On 29 May the Director General told the complainant's counsel that, although his client's complaint had not been correctly filed, the service in charge of psychosocial risks had dealt with his case in accordance with the provisions of Rule of Application No. 40. Concerning the request to provide statistics on harassment, he informed him that he did not consider it necessary to share them with him.

On 1 July 2019 the Head of the Human Resources and Services Unit acknowledged receipt of the letter from the complainant's counsel of 12 April and indicated that the Organisation had eventually agreed to examine his harassment complaint. However, she stated that she could not accept the allegations against one of the host managers, Mr H.B., responsible for ensuring the proper progress of the complainant's assignment in 2015, since the formal harassment complaint – contained in the internal complaint of 20 December 2017 – had not been filed in time with respect to the host manager concerned, that is to say "not later than eighteen (18) months after the date of the most recent incident", as provided in Article 5.2 a) of Rule of Application No. 40. Consequently, the complaint was considered receivable only insofar as it was directed against Mr P.H.

On 4 September 2019 the Director General acknowledged receipt, in turn, of the letter from the complainant's counsel of 12 April and informed him that an administrative investigation into the harassment complaint filed on 20 December 2017 by means of the internal complaint was to be launched, that the allegations against Mr H.B. would not be

* Registry's translation.

examined because they were time-barred, under the provisions of Rule of Application No. 40, and that only the allegations relating to the host manager for 2016, Mr P.H., would be taken into account. On the same day, the complainant was informed of the appointment of the two investigators responsible for dealing with his complaint, namely an internal investigator, Ms A.D., the head of the service in charge of psychosocial risks, and an investigator from an external firm.

On 6 September 2019 the complainant's counsel challenged the lawfulness of the time limit of 18 months specified in Rule of Application No. 40 and reiterated the allegations of moral harassment against Mr H.B. He further asserted that his client was also subject to institutional harassment and that the Organisation was "making every effort to hinder an independent, impartial, serious and thorough investigation"[*] into his moral harassment complaint. With reference to a previous investigation conducted by the aforementioned investigators but without any other details, he expressed doubts about their impartiality and requested that they be replaced. This request and the arguments to challenge the time limit of 18 months were rejected by the Organisation on 16 October 2019.

By a memorandum of 28 October 2019, the complainant's counsel provided the investigators with a list of witnesses whom his client wished to be heard during the investigation. He also set out new factual elements which he considered to constitute the harassment in question and which involved two new staff members. He also stated that the complainant had suffered institutional harassment by the members of the Performance Board, the Secretary of the Joint Committee for Disputes, the Head of the "Graduate Programme", the former and current Director General, the Head of the Human Resources and Services Unit, the head of the service in charge of psychosocial risks and the Head of the Legal Service. This memorandum, which contained a second moral harassment complaint, this time based on complaints of institutional harassment relating to persons other than those already mentioned in the first complaint, was not, however, addressed to the

[*] Registry's translation.

Director General, as required by the above-mentioned Rule of Application No. 40.

On 30 October 2019 the investigators – the external investigator having been replaced in the meantime by her substitute – heard the complainant and recalled him that their mandate was limited to the allegations against the host manager for 2016, namely Mr P.H. During their investigation, they heard five witnesses, as well as Mr P.H. In their investigation report, dated 27 February 2020, which they forwarded to the Director General on that day, they concluded that there had been no harassment by that person.

By email of 27 March 2020, the Director General informed the complainant of his decision, taken on the basis of the conclusions contained in that report – an extract of which he attached –, to dismiss his first harassment complaint as unfounded.

On 5 June 2020 the complainant filed with the Director General, also under Article 92(2) of the Staff Regulations, an internal complaint against that decision, seeking to have it set aside. He also sought the disclosure, to himself and to the Joint Committee for Disputes, of several documents relating to the investigators, all interview reports of persons heard by them and a copy of the full investigation report – having already requested those documents in a previous email of 3 April 2020, as well as in the letter addressed to the investigators on 28 October 2019 –, in addition to statistics on harassment covering the previous ten years. He also claimed payment of damages for the moral injuries that he considered he had suffered, estimating them at at least 100,000 euros, as well as an award of 8,000 euros in costs. By way of conclusion, he stated that his internal complaint "also constitute[d] a [second] formal complaint for moral harassment"[*] against the Head of the Human Resources and Services Unit, the head of the service in charge of psychosocial risks, the investigators appointed to deal with his complaint, the former and current Director General and the Secretary of the Joint Committee for Disputes "due to their conduct

[*] Registry's translation.

since [he] filed [his first] complaint on 20 December 2017 until the decision of 27 March 2020"[*].

On 24 July 2020 the Head of the Human Resources and Services Unit acknowledged receipt of the internal complaint and informed the complainant that it had been forwarded to the Joint Committee for Disputes. Having advised him that there could be a moderate delay in its processing due to the COVID-19 pandemic, she also indicated, on the one hand, that, in accordance with Judgment 3889, the forwarding of the internal complaint interrupted the 60-day time limit during which the complainant could file a complaint against an implied rejection before the Tribunal and, on the other hand, that he should therefore await the final decision of the Director General concerning his internal complaint before filing such a complaint in accordance with Article VII of the Statute of the Tribunal.

By a letter of 10 November 2021, of which the complainant received notification on 19 November, the Director General informed him of his decision to dismiss his second harassment complaint – contained in his internal complaint of 5 June 2020 – as irreceivable on the ground that it did not meet the "minimum criteria for receivability"[*] defined in Rule of Application No. 40.

That is one of the decisions impugned in the present complaint, filed on 7 February 2022, after the complainant had, on 21 January, requested the Director General to take a final decision without delay and to communicate any opinion that the Joint Committee for Disputes had issued on his internal complaint of 5 June 2020. In the meantime, by an email of 31 January 2022, the complainant's counsel wrote to the Director General, the Chairperson and members of the Joint Committee for Disputes, as counsel to several current and former employees of the Organisation, denouncing, in general, a failure to review harassment complaints in addition to a backlog in the processing of internal appeals within the Organisation and, in particular, the absence of a decision on the complainant's internal complaint.

[*] Registry's translation.

The opinion of the Joint Committee for Disputes, adopted on 24 January 2022, was finally forwarded to the complainant on 12 May 2022, at the same time as the Director General's final decision of the same date notifying him that his internal complaint concerning the acts of harassment alleged in his first complaint against Mr P.H. had been dismissed as unfounded.

The complainant asks the Tribunal to set aside the decision of 10 November 2021, as well as the decision of 27 March 2020, and to recognize that he was the victim of moral harassment. He also claims compensation of 100,000 euros for the moral injury that he considers he has suffered and punitive damages, which he estimates at 25,000 euros. Lastly, he seeks an award of 11,000 euros in costs for the investigation and internal appeal procedures, as well as 7,000 euros in costs for the present proceedings.

Principally, Eurocontrol asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust the internal means of redress and because it is time-barred. Subsidiarily, it requests that the complaint be dismissed as unfounded.

## CONSIDERATIONS

1. The complainant asks the Tribunal to recognize that he has been the victim of moral harassment and, consequently, to set aside the Director General's decision of 10 November 2021, as well as that of 27 March 2020, to dismiss his harassment complaints.

2. The complainant states, in support of his complaint, that he complied with the Organisation's internal rules and those applicable before the Tribunal, having exhausted all available internal remedies before filing his complaint with the Tribunal. He takes the Organisation to task for having done everything possible to prevent him from exercising his rights by paralysing the proceedings and impeding him in the exercise of his right to an effective internal remedy. He also argues that "the [Organisation's] handling of the internal complaint [of 5 June 2020], by taking, on the one hand, an express decision and, on

the other hand, by refusing to take a decision on the remainder of that complaint, is a source of procedural confusion: the complainant is required to file a complaint with the Tribunal [...] for the part that has been expressly dismissed but should also wait indefinitely for a final decision for the other part"[*]. This, in his opinion, was "incomprehensible and unacceptable"[*], for which reason the present complaint should be declared receivable in its entirety and the complainant, in view of the specific circumstances of the case, be regarded as having properly exhausted the relevant internal remedies.

Eurocontrol raises three objections to receivability.

Firstly, the complaint should be declared irreceivable insofar as it seeks the setting aside of the decision to dismiss the second formal complaint filed for moral and institutional harassment. That complaint was dismissed by the impugned decision of the Director General of 10 November 2021, and that decision should have been the subject of an internal complaint duly filed in accordance with Article 92(2) of the Staff Regulations, which was not the case.

Secondly, the complaint is also irreceivable insofar as it challenges the decision taken by the Director General, on 4 September 2019, concerning the first harassment complaint, inasmuch as it was directed against Mr H.B. In this case, the complaint was time-barred, having not been filed within the 18-month time limit provided for in Rule of Application No. 40, and the decision was also not contested through the internal means of redress available.

Thirdly, the complaint should even be declared irreceivable in its entirety since, with regard to the first harassment complaint inasmuch as it was directed against Mr P.H., the internal complaint filed by the complainant on 5 June 2020 in accordance with the aforementioned Article 92(2) was referred to the Joint Committee for Disputes for an opinion, which, according to the Tribunal's case law, constitutes a "decision upon the claim", which would thereby preclude its referral to the Tribunal on the basis of Article VII, paragraph 3, of its Statute.

[*] Registry's translation.

3. According to Article VII, paragraph 1, of the Statute of the Tribunal, a complaint shall not be receivable unless the decision impugned is a final decision and "the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations" of the organisation concerned.

4. The Tribunal notes, first of all, that the first formal moral harassment complaint – filed as an internal complaint addressed to the Director General on 20 December 2017 and confirmed by the complainant's counsel on 12 April and 20 May 2019 – was, as regards Mr H.B., declared irreceivable, being time-barred under the provisions of Rule of Application No. 40 concerning harassment, by a decision of the Director General of 4 September 2019. Although this complaint was submitted by the complainant as an internal complaint under Article 92(2) of the Staff Regulations, it should nonetheless have been considered as constituting a formal harassment complaint to be filed with the Director General under Article 5.2 a) of Rule of Application No. 40. This complaint should, therefore, have resulted in an initial decision by the Director General against which an internal complaint could, subsequently, be filed under the aforementioned Article 92(2). In the present case, this initial decision was taken by the Director General on 4 September 2019, when he informed the complainant that the allegations against Mr H.B. were irreceivable. This explains why these allegations were not examined in accordance with the provisions of Rule of Application No. 40.

Although the complainant's counsel, by a letter of 6 September 2019 addressed to the Director General, requested both that the complaint with respect to Mr H.B. continue to be considered and that the two investigators appointed to examine the first harassment complaint inasmuch as it was directed against Mr P.H. be recused, he did not formally submit this document as an internal complaint under Article 92(2) of the Staff Regulations against the Director General's decision of 4 September 2019. The Tribunal considers that, in the present case, this letter was correctly not considered by the Director General to constitute an internal complaint.

It follows that, since the complainant has thus not properly exhausted the internal means of redress provided for in the Staff Regulations in this regard, his complaint must be declared irreceivable insofar as it is directed against the dismissal of the first harassment complaint against Mr H.B.

The second objection to receivability raised by the Organisation is, therefore, allowed.

5. The Tribunal further notes that the complainant's counsel filed a second formal harassment complaint, in which he also alleged institutional harassment, only on 6 September 2019 and supplemented that complaint with a memorandum of 28 October 2019, addressed directly to the two investigators entrusted with investigating the alleged acts of harassment by Mr P.H., and with his internal complaint of 5 June 2020 challenging the dismissal of his first complaint. This second complaint was declared irreceivable by a decision of the Director General of 10 November 2021, of which the complainant was notified on 19 November 2021, on the ground that it did not meet "the minimum criteria for receivability" defined in Rule of Application No. 40. Here again, while the complainant referred to this decision in a letter of 26 January 2022, he did not, however, file an internal complaint with the Director General within the prescribed time limit. Since the complainant has not properly exhausted the internal means of redress provided for in the Staff Regulations in this regard, his complaint must also be declared irreceivable insofar as it is directed against the dismissal of his second complaint.

The first objection to receivability raised by the Organisation is, therefore, also allowed.

6. Insofar as the complaint is directed against the decision of the Director General to dismiss the complainant's first complaint for moral harassment against Mr P.H. as unfounded, the Tribunal notes the following:

(a) Where the Administration takes any action to deal with a claim, by forwarding it to the competent internal appeal body for example, this step in itself constitutes a "decision upon the claim" within the meaning of Article VII, paragraph 3, of the Statute of the Tribunal, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3715, consideration 4, 3428, consideration 18, and 3146, consideration 12).

(b) Under Article 92(2) of the Staff Regulations, the complainant should have filed a complaint before the Tribunal within 90 days from the expiry of the four-month time limit for the Administration to respond to his internal complaint, even if the matter had been referred to the Joint Committee for Disputes. The present complaint should therefore, in principle, be declared irreceivable as time-barred under Article VII, paragraph 2, of the Statute of the Tribunal, combined with Article 92(2) of the Staff Regulations.

(c) However, in this case, the Tribunal considers that the complainant was misled by the Organisation when it indicated to him that, since his internal complaint had been referred to the Joint Committee for Disputes, he had, in accordance with the Tribunal's case law on the application of Article VII, paragraph 3, of its Statute, to await the final decision of the Director General before being able to file a complaint with the Tribunal. By so doing, the Organisation overlooked the fact that, pursuant to Article 92(2) of the Staff Regulations, failure by the Director General to respond to an internal complaint within four months from the date on which it was lodged shall be deemed to constitute an implied decision rejecting it, which may be impugned before the Tribunal. There is no need to declare the complaint irreceivable as time-barred, insofar as it is directed against an implied decision to reject from the Director General. To rule otherwise would amount to unduly depriving the complainant of his right to refer the matter to the Tribunal solely due to the conduct of the Organisation.

(d) The Tribunal observes that, while the complainant's failure to comply with the 90-day time limit to file a complaint with the Tribunal is recognized above as admissible due to the fact that he was wrongly informed by the Organisation that he had to await an express decision,

the complainant did not wait for this decision to be issued before filing his complaint. The complaint should therefore, in principle, be declared irreceivable for failure to exhaust internal means of redress, as required by Article VII, paragraph 1, of the Statute of the Tribunal. However, in this case, taking into account the period of one year and seven months that had elapsed between 5 June 2020, when the complainant filed his internal complaint, and 7 February 2022, when he filed his complaint with the Tribunal, and the fact that his counsel had followed up, to no avail, with the Director General, the Tribunal considers that the complainant was faced with a paralysis of the internal appeal procedure that would allow him to proceed directly to it. Under the Tribunal's case law, a complainant is entitled to file a complaint directly with the Tribunal against the initial decision which she or he intends to challenge where the competent bodies are not able to determine the internal appeal within a reasonable time having regard to the circumstances, provided that she or he has done her or his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a final decision within a reasonable time (see, for example, Judgments 4660, consideration 2, 4271, consideration 5, 4268, considerations 10 and 11, 4200, consideration 3, 3558, consideration 9, 2039, consideration 4, or 1486, consideration 11).

(e) In addition, the Tribunal notes that a final decision was ultimately taken by the Director General on 12 May 2022, as was the opinion of the Joint Committee for Disputes relating thereto, and that that decision was issued in the course of proceedings. Since the Tribunal has the complete dossier in its possession and the parties have had the opportunity to comment fully in their written submissions on the express decision to reject the complainant's internal complaint of 5 June 2020, and thus on the decision to reject the first harassment complaint inasmuch as it was directed against Mr P.H., it considers that, in accordance with its case law, it is appropriate to treat the internal complaint as being directed against the latter decision of 12 May 2022 (see in particular, for similar cases, Judgments 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

7. The present complaint is, accordingly, receivable insofar as it challenges the lawfulness of the Director General's decision of 12 May 2022 to reject, as unfounded, the first moral harassment complaint directed against Mr P.H. It will therefore be examined from this standpoint by the Tribunal.

8. The Tribunal has consistently held that the question as to whether harassment occurred must be determined in the light of a careful examination of all the objective circumstances surrounding the acts complained of (see, in particular, Judgment 4471, consideration 18) and that an allegation of harassment must be borne out by specific facts, the burden of proof being on the person who pleads it, but there is no need to prove that the accused person acted with intent (see, for example, Judgments 4344, consideration 3, 3871, consideration 12, and 3692, consideration 18). When a specific procedure is prescribed by the organisation concerned, it must be followed and the rules must be applied correctly. The Tribunal has also held that the investigation must be objective, rigorous and thorough, in that it must be conducted in a manner designed to ascertain all relevant facts without compromising the good name of the person implicated and to give that person the opportunity to test the evidence put against her or him and to answer the charges made (see, in particular, Judgments 4663, considerations 10 to 13, 4253, consideration 3, 3314, consideration 14, and 2771, consideration 15). It is, however, well settled that a staff member alleging harassment does not need to demonstrate, nor does the person or body evaluating the claim, that the facts establish beyond reasonable doubt that harassment occurred (see, in this connection, Judgments 4663, consideration 12, and 4289, consideration 10). The main factor in the recognition of harassment is the perception that the person concerned may reasonably and objectively have of acts or remarks liable to demean or humiliate her or him (see Judgments 4663, consideration 13, and 4541, consideration 8).

The Tribunal recalls, furthermore, that it is not its role to reweigh the evidence before an investigative body which, as the primary trier of facts, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said

(see, in this respect, Judgments 4291, consideration 12, and 3593, consideration 12). Accordingly, the Tribunal will only interfere in the case of manifest error (see, in particular, Judgments 4344, consideration 8, 4091, consideration 17, and 3597, consideration 2).

9. The complainant first points out various procedural flaws in the internal proceedings in this case.

Among these various unlawful actions, some appear to the Tribunal to be substantial in nature, with the consequence that, were they to be recognized as well-founded, they would in themselves lead to the conclusion that the decision taken by the Director General on 12 May 2022 was unlawful.

10. It is firstly clear, on the one hand, that the final investigation report, although requested by the complainant on several occasions, was never forwarded to him during the internal proceedings, even in anonymized form, which made him unable to be properly heard with full knowledge of the facts in these proceedings.

It emerges from the Director General's decision of 27 March 2020, whereby he dismissed the internal appeal filed against the decision to dismiss the first harassment complaint inasmuch as it was directed against Mr P.H., that only the conclusions of the investigation report, set out in point 5 thereof, were forwarded to the complainant as an annex to the decision, while, in the decision itself, the Director General merely stated that "the facts examined in [the complainant's] case [were] not constitutive of moral harassment". Furthermore, if the Tribunal also refers to these conclusions of the investigation report, it must be noted that they are limited to the following considerations: firstly, "[t]he perception of the facts given by [the complainant] is not in line with the perception by Mr [P.H.] and by all heard MUAC [in Maastricht] witnesses. Documents give prove [sic] of meetings, appraisals, and situations, but do not prove any form of psychological harassment"; secondly, "[t]he investigation only focussed on possible psychological harassment by Mr [P.H.], it was not mandated to go further into the broader context"; thirdly, various observations made by

the investigators about how the recruitment programme for young graduates was organized by the Organisation.

The Tribunal considers that such limited disclosure of the conclusions of the investigation report clearly does not meet the requirements laid down in its relevant case law and that the complainant may reasonably claim that he was unable to verify, even at the internal appeal stage, the content of the statements of the alleged harasser and the witnesses or the seriousness of the investigation conducted (compare, in particular, with Judgment 4471, considerations 14 and 23). The Tribunal recalls that it is firmly established that a staff member must, as a general rule, have access to all evidence on which the competent authority bases its decision concerning her or him (see, for example, Judgments 4739, consideration 10 (and the case law cited therein), 4217, consideration 4, 3995, consideration 5, 3295, consideration 13, 3214, consideration 24, 2700, consideration 6, or 2229, consideration 3(b)). This implies, among other things, that an organization must forward to the staff member who has filed a harassment complaint the report drawn up at the end of the investigation of that complaint (see, in particular, Judgments 4217, consideration 4, 3995, consideration 5, 3831, consideration 17, and 3347, considerations 19 to 21).

11. The Organisation argues in this regard that the full investigation report is annexed to its reply and that this is in line with the Tribunal's case law on this point, whereby the reasons for a decision may be provided in other proceedings or may be conveyed in response to a subsequent challenge (see Judgments 3316, consideration 7, 1757, consideration 5, and 1590, consideration 7).

However, the Tribunal has already recalled in this regard that, while the non-disclosure of evidence can be corrected, in certain cases, when this flaw is subsequently remedied, including in proceedings before it (see, for example, Judgments 4217, consideration 4, and 3117, consideration 11), that is not the case where the document in question is of vital importance having regard to the subject matter of the dispute, as it is here (see Judgments 4217 consideration 4, 3995, consideration 5,

3831, considerations 16, 17 and 29, 3490, consideration 33, and 2315, consideration 27).

12. Secondly, it appears, as the Organisation acknowledges in its reply, that the investigation report was also not provided, either in full or even in anonymized form, to the Joint Committee for Disputes before it gave its opinion on 27 February 2020, which in itself also constitutes a flaw since the Committee must be able under all circumstances to give a full and informed opinion (see, in this respect, Judgments 4471, consideration 14, and 4167, consideration 3).

The fact that the members of the Committee considered unanimously that the complainant's internal complaint was well-founded is irrelevant in this respect, since the Committee could have given an even more reasoned opinion on the merits had it been provided with the final investigation report.

13. The Tribunal observes, thirdly, that, although the two matters outlined above were, among others, specifically noted by the Joint Committee for Disputes in reaching the unanimous conclusion, in its opinion issued on 24 January 2022, that the complainant's internal complaint was well-founded, they were not in any way addressed in the reasons given in the Director General's final decision of 12 May 2022. Accordingly, there are grounds for considering that the reasons given for this decision are also not adequate, within the meaning of the Tribunal's relevant case law (see Judgments 4700, consideration 4, 4598, consideration 12, 4400, consideration 10, and 4062, consideration 3).

14. The Tribunal concludes that the complainant may properly plead the existence of at least three substantial flaws in the manner in which the internal appeal procedure relating to his first complaint for moral harassment was conducted, inasmuch as it was directed against Mr P.H. (compare with Judgment 4471, consideration 15).

This is a sufficient basis, in itself, to conclude that the Director General's decision of 12 May 2022 must be set aside.

15. The Tribunal notes, however, that the complainant also submits that the review of the merits of his complaint is tainted by various legal flaws at the first stage of the procedure followed in that regard.

16. Among the various flaws alleged by the complainant, there is one which also appears substantial in the Tribunal's view.

As is clear from the above, it is established, as he claims in his written submissions, that the complainant, although he addressed a specific request to the investigators on 28 October 2019, even before the alleged harasser and the witnesses were heard and before the investigators drew up their report, did not have knowledge of the statement made to them by Mr P.H., nor indeed of the witness statements gathered by them, or at least of their content, even in anonymized form, to be able to challenge these before the investigators drew up their report and the Director General made his original decision. This is clearly contrary to the Tribunal's case law whereby, by virtue of the adversarial principle, the complainant in a harassment complaint must be informed, even before the end of the investigation, of the content of statements made by the persons accused and any testimony gathered as part of the investigation, in order to challenge them if necessary (see, in this respect, Judgment 4781, consideration 9, and the case law cited therein).

17. It follows that the review of the merits of the first complaint filed by the complainant is itself tainted by at least one substantial flaw which also renders unlawful the decision taken by the Director General on 27 March 2020.

18. Being invalidated on two counts, the case should, in principle, be remitted to the Organisation for a fresh investigation into the merits of the first harassment complaint filed by the complainant inasmuch as it is directed against Mr P.H.

However, the Tribunal holds that because of the considerable time that has elapsed since this complaint was filed, as well as the fact that the complainant is no longer a staff member of the Organisation since 31 December 2017, it is not appropriate here to remit the case to the Organisation for a fresh examination of the harassment complaint filed on 20 December 2017 inasmuch as it was directed against Mr P.H. (see, to this effect, Judgments 4781, consideration 9 (as well as the case law cited therein), and 4471, consideration 16).

19. Furthermore, in his written submissions, the complainant does not seek to refer the case back but merely claims redress for damages for moral injury.

20. The complainant seeks compensation for the moral injury which he considers he has suffered, both because of the various flaws in the review of the merits of his moral harassment complaint and because of the abnormally long time taken by the Organisation to examine that complaint.

With regard to the first element of the alleged injury, it appears that the complainant can claim actual moral injury for the violation of his rights resulting from the failure to properly examine his complaint as well as from the flaws pointed out above, which have substantially prejudiced his right to due process.

Regarding the second element of the alleged injury, the Tribunal notes that the time limits specified by the rules applicable to the case were manifestly not complied with and that the period of over four years and five months that elapsed between the filing of the internal complaint, on 20 December 2017, and the final decision taken by the Director General in that respect, on 12 May 2022, is clearly unreasonable. However, it observes that part of this period, namely the period from 20 December 2017 to 4 October 2018, can largely be explained by the fact that the complainant created himself a certain confusion by including his first complaint for moral harassment, directed in particular against Mr P.H., in his internal complaint of 20 December 2017, when it would have been more appropriate to do so

in a separate document stating clearly in its heading that it constituted a formal complaint of moral harassment under Rule of Application No. 40. Nonetheless, while the Director General announced, by his decision of 4 October 2018, his intention to examine the complaint, the formal procedure whereby it was examined only really commenced with the Director General's decision of 4 July 2019. In addition, while the complainant filed his internal complaint on 5 June 2020 against the Director General's decision of 27 March 2020 to dismiss his complaint, the Director General's final decision was taken only on 12 May 2022, almost two years after the internal complaint was filed. Such delays are, clearly, inadmissible.

21. The complainant seeks an award of 100,000 euros in moral damages. In support of this claim, he cites, among other things, the unfair nature of his dismissal.

However, the Tribunal observes that, by its aforementioned Judgment 4513, it has already awarded the complainant 65,000 euros in compensation for both the material and moral injury suffered on account of this unfair dismissal.

In the light of the foregoing and in view of the specific circumstances of the present case, the Tribunal considers that the moral injury suffered by the complainant due to the inadequate handling of his harassment complaint will be fairly redressed by awarding him, under this head, moral damages in the sum of 15,000 euros.

22. The complainant requests that the Organisation be ordered to pay 25,000 euros in punitive damages for its unfair conduct.

However, the Tribunal recalls that, according to consistent precedent, an award of punitive damages is only warranted in exceptional circumstances (see, in particular, Judgments 4659, consideration 14, 4658, consideration 10, 4506, consideration 10, and 4391, consideration 14), and finds that such circumstances are not evident in this case.

There are, therefore, no grounds for granting this request.

23. The complainant also requests that the Organisation be ordered to pay 11,000 euros for the costs incurred "relating to the harassment proceedings and the internal appeal, on which no action was taken"[*].

However, as the Tribunal has consistently held, such costs may only be awarded under exceptional circumstances (see, in particular, Judgments 4665, consideration 10, 4644, consideration 3, 4554, consideration 8, 4541, consideration 12, 4348, consideration 8, and 4217, consideration 12). There is nothing in the complainant's written submissions that would support a finding that such circumstances were present in this case.

Accordingly, that claim must also be rejected.

24. As the complainant succeeds in part, he should be awarded the sum of 7,000 euros that he claims in costs for the present proceedings.

25. All other claims will be dismissed.

## DECISION

For the above reasons,

1. The decisions of the Director General of Eurocontrol of 27 March 2020 and 12 May 2022 are set aside.
2. Eurocontrol shall pay the complainant moral damages in the amount of 15,000 euros.
3. It shall also pay him 7,000 euros in costs.
4. All other claims are dismissed.

[*] Registry's translation.

In witness of this judgment, adopted on 10 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER