

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. (Nos. 1 and 4)

v.

CERN

138th Session

Judgment No. 4900

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mr F. C. against the European Organization for Nuclear Research (CERN) on 27 January 2021 and corrected on 8 and 18 February 2021;

Considering CERN's request of 17 May 2021 for a stay of proceedings, granted by the President of the Tribunal on 18 June 2021 and extended until 2 November 2021;

Considering CERN's reply of 10 November 2021, the complainant's rejoinder of 14 February 2022, CERN's surrejoinder of 13 April 2022 and the additional information submitted on 11 March 2024 by CERN at the Tribunal's request;

Considering the fourth complaint filed by Mr F. C. against CERN on 19 January 2022 and corrected on 21 and 24 February, CERN's reply of 10 August 2022, the complainant's rejoinder of 10 September 2022, CERN's surrejoinder of 10 November 2022 and the additional information submitted on 11 March 2024 by CERN at the Tribunal's request;

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

Having examined the written submissions;

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

The complainant challenges, in his first complaint, the partial rejection of his harassment complaint before investigation and, in his fourth complaint, the rejection of his harassment complaint after investigation.

The complainant entered CERN's service in January 1998. He was granted an indefinite contract in 2003. Over the years, he has worked in various services of the Organization. He was assigned as computing engineer to the Information Technology Department (IT) in 2012, then to the Site and Civil Engineering Department from early 2021.

On 11 March 2020 the complainant filed a formal complaint of harassment. His allegations related to events dating back to 2016 and concerned various individuals. The Chairperson of the Harassment Investigation Panel ("the Panel") appointed an Investigating Subpanel to deal with that complaint ("the Subpanel") on 4 May 2020. The complainant was requested to complete a form providing the contact details of the alleged harassers, which he returned on 8 May, including the contact details of his supervisor at the time and of his supervisor during his previous assignment to another group in the same department. The complainant was interviewed on 20 May and 17 June 2020 during the initial assessment of the complaint.

By an email and a letter of 7 July 2020, the complainant was informed that, following the initial assessment, the Subpanel had found: (a) that his allegations against his former supervisor were irreceivable because they concerned events that took place between 2016 and 2018, more than six months before the harassment complaint was submitted, and that in any case these allegations did not refer to behaviour that met the official definition of harassment, and (b) that his allegations against his supervisor at the time were partly receivable, without stating which part(s) was/were receivable or not. No reference was made to the allegations against other individuals. The email of 7 July 2020 also stated that the procedure would continue concerning the receivable allegations.

On 1 September 2020 the complainant lodged an internal appeal against “the decision dated 7 July 2020 to partly reject [his] harassment complaint”*. As the Organization did not respond within the prescribed time limit of 60 days, on 27 January 2021 the complainant filed his first complaint with the Tribunal against the implied decision to reject his internal appeal.

In the meantime, the Subpanel found in its final investigation report, issued on 6 October 2020, that the behaviour of the complainant’s supervisor did not meet the definition of harassment. The Director-General of CERN decided to endorse its findings and notified the complainant of that decision on 16 November 2020. On 13 January 2021 the complainant lodged an internal appeal against the decision to reject his complaint following the investigation, in which he put forward arguments that were in some respects identical to those raised in his first internal appeal of 1 September 2020.

In the circumstances of the case, CERN considered it appropriate, in its view exceptionally, to find the appeal of 13 January 2021 receivable in its entirety, and the Joint Advisory Appeals Board (JAAB) subsequently issued its report on 1 October 2021, taking into account all the complainant’s arguments. The JAAB found that the decision to reject the harassment complaint had been taken in compliance with the applicable rules and in accordance with the procedures in force, and it recommended that the appeal be rejected.

On 21 October 2021 the complainant was notified of the Director-General’s decision to follow that recommendation and to reject the internal appeal he had lodged on 13 January 2021. That is the decision impugned by the complainant in his fourth complaint, filed with the Tribunal on 19 January 2022.

In his first complaint, the complainant asks the Tribunal to set aside the decision rejecting his harassment complaint against his former supervisor (Mr G.L.) and the Project Leader and Mr G.L.’s supervisor (Ms L.M.); to set aside the partial rejection of the complaint against his supervisor (Mr T.S.) at the time he submitted his complaint; to order

* Registry’s translation.

that a proper investigation be conducted into all incidents; to award him moral damages of 20,000 euros; and to order payment of 10,000 euros in costs. In his fourth complaint, the complainant asks the Tribunal to set aside the impugned decision; to find that moral harassment took place or, alternatively, to order that a proper investigation be conducted into all individuals concerned and every incident referred to; to award him moral damages of 40,000 euros; and to order payment of 10,000 euros in costs.

CERN requests the Tribunal to reject the first complaint as unfounded in its entirety and the fourth complaint as partly irreceivable and, in any event, as unfounded in its entirety.

CONSIDERATIONS

1. The same formal complaint of harassment, submitted by the complainant on 11 March 2020, has given rise to two complaints filed with the Tribunal on 27 January 2021 and 19 January 2022 respectively.

2. In the first complaint, the complainant challenges what is purported to be an implied decision of rejection, pursuant to Article R VI 1.03 of the CERN Staff Rules and Regulations, of his internal appeal of 1 September 2020 against the decision of which he was notified by the Chairperson of the Harassment Investigation Panel on 7 July 2020.

On that day, the Chairperson of the Investigation Panel informed the complainant by letter that the Subpanel appointed to deal with his harassment complaint had found that it was irreceivable against Mr G.L., his former supervisor. According to the Subpanel, the allegations against his former supervisor were irreceivable “because they concern[ed] behaviour and/or events that took place between 2016 and 2018, that is over six months before the submission of [his] complaint”*. In his letter, the Chairperson added that these allegations

* Registry’s translation.

did not refer to behaviour that met the definitions of harassment. Nevertheless, he told the complainant that the Subpanel had considered that a disparaging remark made by Mr G.L. in front of a third person – namely “[complainant’s name], if your performance doesn’t improve by the end of the year, I’ll do the same to you as I did in 2016”^{*} – by contrast indicated inappropriate conduct. The Chairperson invited the complainant to discuss the matter with him.

3. In a separate email of the same day informing the complainant of the Investigating Subpanel’s finding, the Chairperson also informed him that his formal complaint against his then supervisor, Mr T.S., was partly receivable and that the Subpanel was to initiate the investigation phase in respect of this part of his complaint.

4. The Tribunal notes that, in his written statement supporting the internal appeal submitted against that decision of 7 July 2020, the complainant stated, on the one hand, that the response to his harassment complaint failed to take a view on the allegations of harassment directed against Ms L.M. and, on the other hand, did not explain why his complaint had been partly rejected. The complainant further took issue with the fact that, regarding Mr T.S., he had been told that the complaint was only “partly receivable”^{*} with no explanation as to what parts of that complaint were irreceivable in his respect. The complainant submitted in that regard that “the lack of detail regarding aspects [of the complaint] which [had been] found irreceivable [did] not allow [him] to put [his] case properly, in breach of the adversarial principle”^{*}

The Tribunal further observes that CERN acknowledges in its written submissions that the Director-General did not respond to the internal appeal within the prescribed time limit, stating that the appeal had unfortunately been forgotten and presenting its apologies for this regrettable situation. In its written submissions, the Organization does not dispute the fact that the contested decision of 7 July 2020 was an administrative decision within the meaning of Article S VI 1.01 of the Staff Rules and that, since the Director-General failed to reply within

^{*} Registry’s translation.

the prescribed time limit, that decision was to be deemed final and could thus be challenged before the Tribunal pursuant to Article R VI 1.03 of the Staff Regulations.

5. In the fourth complaint before the Tribunal, the second arising from his harassment complaint of 11 March 2020, the complainant impugns the Director-General's decision to follow the recommendation of the Joint Advisory Appeals Board (JAAB) and to reject the internal appeal he had lodged on 13 January 2021. This second internal appeal lodged by the complainant was intended to be directed against the Director-General's decision of 16 November 2020 to reject his harassment complaint following the thorough investigation by the Investigating Subpanel.

In her decision of 16 November 2020, which referred to the Subpanel's final investigation report, the Director-General pointed out, *inter alia*, that the Subpanel had found that, although the complainant had felt unhappy at work for several years, owing in particular to a series of disagreements with some of his supervisors, there was no evidence that his then supervisor, Mr T.S., had committed harassment. The Director-General also informed the complainant that she had noted the Subpanel's remark expressing the hope that his situation might evolve towards an assignment that would benefit both him and the Organization, a view which the Director-General stated she supported.

6. Between these complaints filed on 27 January 2021 and 19 January 2022, the complainant also filed two other complaints with the Tribunal concerning, firstly, his performance appraisal for 2018 (on 3 February 2021) and, secondly, his performance appraisal for 2019 (on 4 August 2021), which are the subject of Judgments 4901 and 4902, also delivered in public this day.

7. In view of the similarities and overlaps between the first and fourth complaints described above, in particular of the finding that they arose from the handling of the same harassment complaint, that the facts giving rise to the two decisions in question are closely intertwined, that the parties' arguments overlap to a large extent and that, although there

were two internal appeals, the JAAB issued a single report intending, at least in theory, to cover the consideration of both situations, the Tribunal considers that it is appropriate to join these two complaints in order that they may form the subject of a single judgment.

8. In its written submissions, the Organization, without entering a plea of irreceivability, draws attention at the outset to what it describes as an abuse committed by the complainant in unjustifiably initiating multiple proceedings against CERN whereas, in its view, the complainant could have dispensed with some of these in the interests of all parties.

According to CERN, the two complaints filed with the Tribunal by the complainant following the partial rejection and the subsequent rejection of his harassment complaint in fact raise the same issues since all the claims contained in the internal appeals of 1 September 2020 and 13 January 2021 were examined in the same adversarial and impartial proceedings which resulted in the JAAB report of 1 October 2021 concluding that the procedural rules applicable to the complainant's harassment complaint had been fully complied with.

9. However, the Tribunal considers, firstly, that the Organization has no grounds to accuse the complainant of any form of abuse or unwarranted multiplication of proceedings in this case. The decision of 7 July 2020, rejecting several parts of the harassment complaint as irreceivable, was separate from the subsequent decision of 16 November 2020, taken following the Investigating Subpanel's final report of 6 October 2020 and leading to the complainant's second internal appeal of 13 January 2021. In this respect, the Tribunal notes that Article 41 of Operational Circular No. 9, entitled "Principles and Procedures Governing Complaints of Harassment" ("OC No. 9"), clearly demonstrates that the rejection of a harassment complaint as irreceivable "is an administrative decision in accordance with Article S VI 1.01 of the Staff Rules".

Moreover, if the complainant's first complaint to the Tribunal proved necessary, it is because CERN had not replied to his internal appeal against the decision of 7 July 2020, which constituted a final decision pursuant to the applicable provisions of the CERN Staff Rules and Regulations that could be impugned in such a complaint. The complainant had therefore every reason to fear that his challenge to the decision of 7 July 2020 would be time-barred if he did not file a complaint without delay.

10. Secondly, the Tribunal cannot agree with CERN's argument that the JAAB examined all aspects of the complainant's internal appeal relating to the decision of 7 July 2020 in its report of 1 October 2021, thereby implying that ultimately, by endorsing the JAAB's recommendations to reject the complainant's harassment complaint, the Organization had made a final decision rejecting both the internal appeals of 13 January 2021 and 1 September 2020.

Indeed, the Tribunal observes that, in the decision of 21 October 2021, which is the decision impugned in the complainant's fourth complaint before the Tribunal concerning the rejection of his harassment complaint after investigation, the Organization refers only to the examination of the internal appeal of 13 January 2021, and not to that of the appeal of 1 September 2020. Moreover, the assessment set out in the JAAB report of 1 October 2021, which led to the final decision of 21 October 2021, does not deal with the complainant's arguments with regard, for example, to the Investigating Subpanel's summary rejection of his complaint in respect of Ms L.M. in July 2020 or the complainant's arguments concerning the failure to indicate the aspects of his complaint that the Subpanel had considered irreceivable in respect of his supervisor, Mr T.S.

Furthermore, although the Organization dwells on this matter in its written submissions, no negative inference against the complainant can be drawn from the temporary stay of his first complaint filed on 27 January 2021, decided by the President of the Tribunal for the period from 18 June to 2 November 2021. It is clear that the sole purpose of the stay was to allow the proceedings relating to the complainant's

second internal appeal to continue to their end, and nothing more. It cannot be submitted that, by granting such a stay, the Tribunal intended to indicate in any way that there was an unjustified multiplication of proceedings in this case.

11. In both complaints, the complainant has requested oral proceedings, including, in respect of his first, the hearing of several witnesses. However, in view of the parties' abundant and highly detailed written submissions and the content of the arguments raised, which mainly concern procedural flaws, the Tribunal considers that it is fully informed of the cases and finds it unnecessary to grant this request.

12. Before considering the complainant's numerous pleas, it is appropriate, firstly, to clarify the content of his harassment complaint of 11 March 2020; secondly, to identify the applicable provisions of the Operational Circular which establishes the procedure to be followed within CERN for a harassment complaint, namely aforementioned OC No. 9; and, thirdly, to recall the legal principles that the Tribunal applies in relation to harassment.

13. The Tribunal notes first of all that, in his harassment complaint, the complainant alleged that he had been "faced with professional difficulties linked to behaviour that gradually created a hostile work environment and violated [his] dignity"*. His detailed statement identified one of the first incidents as dating back to 2016 and his performance appraisal at the time, qualified as "fair". He submitted that his supervisor, Mr G.L., had admitted at the time that this qualification resulted from an instruction that he was to have a minimum quota of lower qualifications in his department. The complainant's detailed statement also referred to contradictory information provided by Mr G.L. and Ms L.M. concerning his performance and complained of having been "lectured in public"* by Ms L.M. The statement then linked this to another incident involving

* Registry's translation.

his supervisor, Mr G.L., which had occurred in front of his group and to other humiliating situations that took place in October 2018. The detailed statement also mentioned Mr T.S.’s conduct in 2019 during his performance appraisal for that year.

In this harassment complaint, the complainant alleged that he was “the victim of a form of widespread and continuous institutional harassment”*. His detailed statement made reference in this respect to the definition of harassment contained in OC No. 9 and to the conduct constituting harassment under paragraphs 4 and 5 of the Circular. He submitted that criticism of his performance, starting with his first appraisal in 2016, amounted to harassment. He considered that the accumulation of incidents of varying severity from 2016 warranted a thorough investigation to establish an exhaustive list of conduct that, taken as a whole, should be considered as harassment.

In this regard, the Tribunal points out that the notes of the Subpanel’s interviews with the complainant, which preceded the decision to partly reject his complaint at the initial assessment phase, contain his comments, including, for example, the following remark about his perception of the situation he stated he experienced within the Organization:

“[...]

That remark about me tallied with the behaviour I had been subjected to for months and by the spread in my working environment, meaning by the Head of CDS [CERN Document Service] Ms [L. M.], the colleagues in CDS and others, and the supervisor until 2018 Mr [G. L.], including Mr [T. S.], of a feeling that I would sum up as ‘[the complainant’s first name] is hopeless’. There was such prejudice that, if there was a problem, it was inevitably me who was to blame, without too much investigation, questioning or discussion with people who could resolve technical issues.

[...]”*

14. As regards OC No. 9, entitled “Principles and Procedures Governing Complaints of Harassment”, it contains the following definitions and criteria in its paragraphs 3, 4 and 5:

* Registry’s translation.

- “3. Harassment means unwelcome behaviour that has the effect of violating a person’s dignity and/or creating a hostile work environment. Such behaviour is contrary to the principles of equal opportunity, non-discrimination and mutual respect. Moreover, it is detrimental to health and safety at the workplace and the good functioning of the Organization in general. For these reasons, the Organization does not tolerate harassment, which can result in administrative and/or disciplinary action.
4. Harassment includes both sexual and moral harassment.
[...]
 - 4.2 The term moral harassment covers, inter alia:
 - 4.2.1 aggression and/or persistent threatening aimed at systematically demeaning, isolating, bullying or attacking a person;
 - 4.2.2 behaviour that casts doubt on a person’s skills or efficiency, or undermines their self-confidence or integrity;
 - 4.2.3 behaviour that is denigratory, or ridicules or seeks to discredit a person;
 - 4.2.4 discriminatory or offensive comments or behaviour, in particular on the basis of sex, age, religion, beliefs, nationality, culture, ethnicity, race, sexual orientation, status at CERN, disability or family situation;
 - 4.2.5 abuse of authority, abuse of power or emotional abuse.
5. The following criteria shall be considered in the process of establishing whether behaviour constitutes harassment:
[...]
 - 5.5 **Work relationship:** Harassment is to be distinguished from a job conflict and is not to be confused with expression of disagreement, admonition or constructive criticism in respect of work performance or conduct. In particular, harassment is not to be confused with the assessment of a person’s work in the framework of the approved appraisal procedures. However, such assessments shall not be used as a means to harass or as retaliation for reporting harassment.”

15. The Circular then states that the resolution process is to be conducted under the oversight of a Harassment Investigation Panel. It specifies as follows with regard to formal harassment complaints (paragraphs 26, 27 and 28) and the investigation process (paragraph 36):

- “26. A formal harassment complaint may be filed by:
- 26.1 a person claiming to be the victim of harassment; or
[...]
27. The formal harassment complaint shall be filed with the Chairperson within:
- 27.1 six months of the most recent act of alleged harassment; or
[...]
- In exceptional circumstances, the six-month period referred to in § 27.1 may be extended by the Chairperson.
28. A formal harassment complaint must be signed and dated and include the following:
- 28.1 a detailed written statement of the facts, including persons, places, dates and a description of the acts of alleged harassment;
 - 28.2 the names of witnesses, if any, of the acts of alleged harassment and/or the impact thereof on the alleged victim; and
 - 28.3 all other relevant documentation (for example: e-mails, message recordings, photographs, letters, medical examinations).
- [...]
36. The investigation process consists of an initial assessment phase followed, if necessary, by an investigation phase.
- 36.1 In the initial assessment phase, the Investigating Subpanel decides whether a formal harassment complaint is receivable.
 - 36.2 In the investigation phase, the Investigating Subpanel establishes the facts and issues an opinion as to whether or not harassment has occurred.”

16. Moreover, with regard to the initial assessment phase, the Circular provides as follows concerning the receivability of the harassment complaint and the report to be drawn up by the Subpanel once it has completed its initial assessment:

- “37. To be receivable, a formal harassment complaint shall:
- 37.1 be submitted within the time limits referred to in § 27;
 - 37.2 satisfy the formal conditions set out in § 28;
 - 37.3 allege behaviour that meets the definitions of harassment as set out in §§ 3 to 5.

38. The initial assessment shall be limited to a review of the formal harassment complaint and an interview with the alleged victim. During the interview, the alleged victim may be accompanied by a member [...] of the personnel [...]
40. Upon conclusion of the initial assessment, the Investigating Subpanel shall issue to the Chairperson a written report, stating its decision as to whether the formal harassment complaint is receivable and setting out the reasons for this decision.
41. In the event that the Investigating Subpanel decides that the formal harassment complaint is not receivable, the Chairperson shall notify the alleged victim in writing of this decision and its underlying reasons. This decision is an administrative decision in accordance with Article S VI 1.01 of the Staff Rules.
42. In the event that the Investigating Subpanel decides that the formal harassment complaint is receivable, the Investigating Subpanel shall so inform the Chairperson. If the alleged harasser:
 - 42.1 is a member of the personnel, the Investigating Subpanel shall proceed to the investigation phase. The Chairperson shall notify the alleged victim and the alleged harasser in writing, accordingly. The Chairperson shall provide the alleged harasser with a copy of the written statement included in the formal harassment complaint, as well of any other statements of the alleged victim accepted by the Investigating Subpanel.
 - 42.2 is not a member of the personnel, the Investigating Subpanel shall not proceed to the investigation phase. The Chairperson shall notify the CERN contract manager of the outcome of the initial assessment who in turn shall notify the employer of the alleged harasser with a request for appropriate action. The Chairperson shall notify the alleged victim in writing of these developments and of the action taken.”

17. Finally, with regard to the investigation phase, paragraphs 49 to 53 of OC No. 9 deal with the resulting report by providing as follows:

- “49. At the end of the investigation phase, the Investigating Subpanel shall issue a written investigation report which shall summarize:
 - 49.1 the statement of procedure;
 - 49.2 the persons interviewed (if deemed essential by the Investigating Subpanel, their identity may be made anonymous);

- 49.3 the documentation and any additional information considered in the course of the investigation;
 - 49.4 the facts established in the course of the investigation;
 - 49.5 an opinion as to whether or not the facts established amount to harassment.
50. Within 15 calendar days of receipt of the investigation report, the Chairperson shall send it, with his comments if any, to the Director-General with a copy to the Head of the Human Resources Department. In case of disagreement at the end of the investigation phase, the differing opinions as to whether harassment has occurred will be presented in the investigation report.
- [...]
51. Within 30 calendar days of receipt of the investigation report, the Director-General shall decide, on the basis of the report, whether harassment has occurred. He shall further decide whether to pursue disciplinary action under Chapter VI, Section 2 of the Staff Rules and Regulations and/or administrative action. If the Director-General decides to pursue disciplinary action, the matter shall be referred to the Head of the Human Resources Department.
52. Within five calendar days of his decision, the Director-General shall notify in writing the alleged victim, the alleged harasser, the Chairperson and, where the alleged harasser is an associated member of the personnel, his home institution, of his decision. Such notification shall indicate the facts established in the course of the investigation and the opinion(s) set out in the investigation report, as well as the Director-General's conclusions thereon.
53. The investigation report issued by the Investigating Subpanel shall form the basis for fact finding in disciplinary and/or settlement of dispute procedures under Chapter VI of the Staff Rules and Regulations.”

18. In respect of harassment, the Tribunal's settled case law states that the question as to whether a harassment complaint is justified must be determined in the light of a careful examination of all the objective circumstances surrounding the events complained of (see, for example, Judgment 4471, consideration 18).

It is also accepted that there is no need to prove that the perpetrator intended to engage in harassment, the main factor being the perception that the person concerned may reasonably and objectively have of acts

or remarks liable to demean or humiliate her or him (see, for example, Judgments 4808, consideration 17, 4663, consideration 3, 4541, consideration 8, and 3318, consideration 7).

19. In his first complaint before the Tribunal, the complainant requests the setting aside of the Investigating Subpanel's decision, firstly, to reject his harassment complaint in respect of Mr G.L. and Ms L.M. as irreceivable, and, secondly, to partly reject the complaint in respect of Mr T.S. He asks the Tribunal to order that all the incidents referred to in his harassment complaint be properly investigated.

Concerning the decision of which the complainant was informed on 7 July 2020, the Tribunal recalls that, in respect of Mr G.L., the complainant was informed that the Investigating Subpanel had found the harassment complaint irreceivable because the conduct or events to which Mr G.L. was linked had taken place between 2016 and 2018, that is more than six months before the complaint was lodged. Moreover, these allegations supposedly did not refer to behaviour meeting the definitions of harassment set out in OC No. 9. However, the complainant was informed that the Subpanel had nevertheless noted that Mr G.L. had behaved inappropriately towards him, without that conduct being categorised more precisely.

Furthermore, although the complainant was informed that the formal complaint against Mr T.S. had been found to be only partly receivable, he was not given any indication as to which parts of that complaint were receivable in his respect and which were not. No mention was made of the allegations against Ms L.M.

20. Among the many pleas entered by the complainant in support of his first complaint to the Tribunal, there are two, based respectively on procedural flaws and obvious errors by the Investigating Subpanel in its understanding of its role during the initial assessment phase, that are decisive for the outcome of the dispute.

21. In the first place, the complainant submits that he was not given an explanation in due time as to why his harassment complaint was rejected in respect of one of the persons concerned, namely Ms L.M., or which parts of his complaint justified the finding that it was partly irreceivable in respect of another of those persons, namely Mr T.S.

22. The Tribunal notes that, firstly with regard to Ms L.M., it is true that no explanation was given to justify the rejection of the harassment complaint in her regard. This is clearly apparent from both the letter of 7 July 2020 from the Chairperson of the Harassment Investigation Panel and his explanatory email of the same date. Moreover, both the initial assessment report issued by the Investigating Subpanel on 2 July 2020 – which, incidentally, was not sent to the complainant until 26 August 2021 – and its final report of 6 October 2020, sent to the complainant with the Director-General's decision of 16 November 2020, are silent in this respect.

However, it is well established in the case law that the reasons for a decision must be sufficiently explicit to enable the staff member concerned to take an informed decision accordingly (see, for example, Judgments 4547, consideration 3, and 4164, consideration 11). It is evident that a total lack of explanation does not meet these requirements.

23. The Organization submits that it did not have to provide any explanations regarding that person as she had never been identified by the complainant as a harasser. In this regard, it refers to the contact form completed by the complainant on 8 May 2020 at the request of the Chairperson of the Investigation Panel, which does not include Ms L.M. in the list of contact details of alleged harassers. CERN adds that the JAAB found on this point that the Subpanel had identified the alleged harassers by correctly analysing all the information at its disposal.

However, the Tribunal considers that, in this respect, the Organization and the JAAB clearly misread the contact form completed by the complainant. Indeed, on the second page of the form, before the

section on alleged harassers on the following page, the complainant carefully indicated:

“In the following pages, persons that are apparently not at CERN anymore are not mentioned, as a CERN address is not available.

The original filed complaint is the reference to identify persons involved to contact. I grant my collaboration to determine contact information of other persons the Investigation Subpanel (or other body involved) deems appropriate to contact.”

However, in the formal complaint which he submitted and to which this extract from the form precisely refers, the person in question, Ms L.M., who no longer worked for the Organization on 8 May 2020, had been expressly identified no fewer than three times in relation to specific events involving her and in respect of which the complainant had named her among the supervisors who, according to him, had behaved in a manner that he described as widespread and continuous institutional harassment.

To argue, as the Organization does, that Ms L.M. was not a harasser named in the harassment complaint is inaccurate and ignores its explicit content. In its written submissions, the Organization acknowledges that the complainant was “legitimately entitled to expect the Subpanel to take the necessary steps to find Ms [L.M.]’s contact details for itself”^{*} if she was accused by the complainant. However, that was the case, contrary to what the Organization submits.

24. The Tribunal considers that, in this context, the Organization could not, as it did, reject the harassment complaint in respect of Ms L.M. without providing the complainant with any explanation in this regard. Although he raised this very issue in his internal appeal, pointing out that the response to his complaint did not take a view on the allegations made against her, he was not given an explanation at any stage. Such a lack of explanation does not meet the minimum requirements necessary to respect the complainant’s right to a proper and fair appeal procedure.

^{*} Registry’s translation.

25. As regards Mr T.S., it is likewise apparent from the information provided to the complainant on 7 July 2020 that no explanation was given to him at that point enabling him to identify which aspects of his harassment complaint against Mr T.S. were considered irreceivable by the Investigating Subpanel.

On this point, the Organization submits that, since the initial assessment of a harassment complaint is intended only to determine whether an investigation ought to be opened into that complaint, the adversarial principle did not apply in this preliminary stage of the procedure and the complainant could not complain that this principle had been breached by the failure to explain which aspects of the complaint had been considered irreceivable in respect of Mr T.S. However, the complainant's objection relates rather to the insufficient and non-existent reasoning provided in support of the decision to reject the complaint as partly irreceivable, which falls within the scope of the complainant's right to a proper and fair appeal procedure and the minimum requirements enabling him to respond and take a decision accordingly.

In the present case, it should also be recalled that the complainant's harassment complaint was ultimately closed in respect of three decisive aspects without the complainant even being provided with the initial assessment report setting out the reasons for the decision taken at that stage, which is unlawful (see Judgment 4471, considerations 1 and 23).

26. The Tribunal considers that these procedural flaws taint the contested decision of 7 July 2020 partly rejecting the complainant's harassment complaint as well as the decision, whether implicit or explicit, to dismiss his internal appeal to that effect.

In this respect, the Tribunal notes that, in its report, the JAAB does not remedy this lack of explanation or reasoning even though these arguments were also raised before it. It merely states erroneously, as regards Ms L.M., that she is not named in the form completed by the complainant on 8 May 2020, and, as regards Mr T.S., that the reason for the partial irreceivability of the allegations against him was not disclosed by the Chairperson of the Investigation Panel "in the aim of

letting proceedings run their course and not disrupting the forthcoming investigation”*, without, however, providing the slightest explanation for this, to say the least unusual, justification.

The complainant’s first plea is therefore well founded.

27. In the second place, the complainant submits that, with regard to the rejection of his harassment complaint as irreceivable in respect of Mr G.L., the contested decision stems from a clearly erroneous interpretation of the applicable provisions on the initial assessment of a complaint.

In this regard, the Tribunal observes that paragraph 37 of OC No. 9 sets out only three conditions for a formal harassment complaint to be receivable: (1) it must be submitted within the time limits referred to in paragraph 27; (2) it must satisfy the formal conditions set out in paragraph 28; and (3) it must refer to behaviour that meets the definitions of harassment set out in paragraphs 3 to 5. In this respect, the complainant’s formal complaint gave several specific examples which he considered, in his perception, as harassment. As paragraph 36.2 of OC No. 9 states, it is during the investigation phase, not the initial assessment phase, that the Subpanel establishes the facts and issues an opinion as to whether or not harassment occurred.

Moreover, in Judgment 3640, consideration 5, the Tribunal recalled that the sole purpose of the preliminary assessment of a harassment complaint is to determine whether there are grounds for opening an investigation. Although that was in a context where the relevant provision was worded differently from that applicable in the present case, the Tribunal emphasised that, at the preliminary assessment stage of a harassment complaint, all that was required was a *prima facie* finding that the complaint was genuine, since the course of a subsequent investigation, if opened, would allow a comprehensive search for evidence. The Tribunal considers that the same applies to the relevant paragraph of OC No. 9.

* Registry’s translation.

28. With regard to the events identified by the complainant in his harassment complaint concerning Mr G.L., the decision of 7 July 2020 states that the Investigating Subpanel concluded that his allegations did not refer to behaviour that met the definitions of harassment in OC No. 9, but noted that an allegation concerning a derogatory remark made by Mr G.L. did refer to inappropriate behaviour.

However, that very remark had been noted by the complainant in his harassment complaint as providing evidence of behaviour by his supervisor that violated his dignity and created a hostile and confrontational work environment, which is precisely what is covered by the definition of harassment provided in the Circular. In addition, that remark, according to which Mr G.L. supposedly said to the complainant in 2018, “[complainant’s first name], if your performance doesn’t improve by the end of the year, I’ll do the same to you as I did in 2016”*, could easily have been understood by the complainant as a veiled threat from his supervisor that a lower appraisal of his performance could be imposed arbitrarily, which is inappropriate behaviour under the official definition of harassment.

The Tribunal considers that, in this context, the Subpanel failed to fulfil its role in the initial assessment phase by not allowing a thorough investigation of this conduct, even though it could reasonably and objectively form part of a pattern of harassment.

29. Furthermore, paragraph 27.1 of OC No. 9 states that the receivability of a harassment complaint is to be assessed as from the most recent act of alleged harassment, which must have taken place less than six months previously. In the present case, as confirmed by the Subpanel when it found the complaint partly receivable in respect of some of the conduct of which Mr T.S. was accused, it has been established that one of the acts of harassment of which the complainant accused three of his supervisors in his complaint met that condition.

* Registry’s translation.

The Tribunal considers that, in the case of a complaint of institutional harassment such as alleged by the complainant in the present case, while it is true that the most recent act must have occurred within a period of six months preceding the formal harassment complaint, that cannot prevent earlier acts possibly involving other individuals from being taken into account in the initial assessment phase.

In Judgment 4601, consideration 8, the Tribunal recalled that, under its case law, the following should be borne in mind with regard to the cumulative effect of repeated incidents over a given period:

“[...] [F]irst, conduct over a period of time can inform the characterisation of particular conduct as harassment (see, in particular, Judgments 4288, consideration 3, and 4233, consideration 3) and, secondly, an accumulation of repeated events, as well as a long series of examples of mismanagement and omissions, can be such as to have compromised the dignity and career objectives of a staff member (see, in particular, Judgment 4286, consideration 17). Indeed, harassment may involve a series of acts over time and can be the result of the cumulative effect of several manifestations of conduct which, taken in isolation, might not be viewed as harassment (see Judgment 4233, consideration 3, and the case law referred to therein), even if they were not challenged at the time (see Judgment 4253, consideration 5, and the judgments cited therein).”

30. In his harassment complaint, the complainant referred to the behaviour of three successive supervisors over a period of time, which in his view constituted widespread and continuous institutional harassment. The most recent behaviour involved Mr T.S., but earlier behaviour involved Mr G.L. and Ms M.L. This behaviour, said to include offensive or denigrating comments, a threat to rate his performance as merely fair, exclusions from group meetings and public reprimands or humiliation, was successive and continuous. However, the refusal to take account of some behaviour alleged in the complaint fundamentally flawed the Subpanel’s determination in the initial assessment phase of whether the complainant had presented a *prima facie* case of institutional harassment.

31. On this point, the Organization asserts that, at the end of an investigation, the Subpanel's role is to draw up a report for the Director-General so that she can decide whether or not to take administrative measures or initiate disciplinary proceedings. The Organization submits that it would therefore be a misreading of OC No. 9 to suggest that it allows the receivability of a harassment complaint to be determined as a whole, without each alleged event having to be assessed for each person accused or mentioned. In the Organization's view, although the Circular allows an alleged victim to complain against several individuals in the same complaint, any examination of the receivability of the complaint and any finding of the subsequent investigation or disciplinary proceedings must be made in respect of individuals, since CERN cannot take disciplinary measures against a group of persons on the basis that they are jointly responsible.

However, this understanding of a harassment complaint, according to which its outcome can solely be determined from the point of view of the persons accused, who may be subject to administrative or disciplinary measures, disregards the Tribunal's case law on the matter, which recalls that a staff member who lodges such a complaint is included as a party to the procedure conducted to ascertain whether that complaint is well-founded, even though she or he will not be a party to any subsequent disciplinary proceedings taken against the perpetrator of recognised harassment. In Judgment 4547, consideration 3, the Tribunal pointed out the following in this respect:

“[...] The staff member concerned is [...] entitled to know whether it has been recognised that acts of harassment have been committed against her or him and, if so, to be informed how the organisation intends to compensate her or him for the material and/or moral injury suffered (see, in this respect, Judgments 3965, consideration 9, and 4541 [...], consideration 4, both of which concern harassment complaints). In the present case, and since such an explanation of reasons could, inter alia, support a possible claim for compensation for the injury suffered, the complainant should have been adequately informed, in the President's final decision of 23 October 2018, of the reasons why the organisation did or did not recognise the existence of harassment by her supervisor (see Judgments 3096, consideration 15, and abovementioned 4541, consideration 4). As she was not, the decision of 23 October 2018 is fundamentally flawed, since the staff member who engaged the procedure, while not entitled to be informed of any measures

taken against the alleged harasser, is entitled to a decision on the question of harassment itself (see, to that effect, Judgments 3096, consideration 15, 4207, considerations 14 and 15, and aforementioned 4541, consideration 4).”

(See also, in this connection, Judgment 4739, consideration 10.)

From this point of view, it is useful to recall that a finding of harassment can sometimes be made in the victim’s favour without the perpetrator necessarily having to undergo disciplinary measures as a result (see, for example, Judgment 4601, consideration 8). In this respect, in Judgment 4602, consideration 14, the Tribunal observed that, even where no provision in the internal regulations, rules or policies of an organization provides for the possibility of a compensation to the individual who filed a harassment complaint, its case law recognises the right to such compensation when properly supported, recalling that it is also well settled in the case law that an international organization has a duty to provide a safe and adequate working environment for its staff members (see also, in this respect, Judgment 4207, consideration 15).

32. It follows from these various considerations that the complainant’s second plea is also well founded.

33. It ensues from the foregoing that, owing to these flaws, the Investigating Subpanel’s decision notified on 7 July 2020 and the subsequent implied decision rejecting the complainant’s internal appeal of 1 September 2020 must be set aside, without there being any need to rule on the other pleas in the first complaint directed against them.

34. The complainant’s fourth complaint, which followed the internal appeal lodged on 13 January 2021, challenged the rejection of the part of his harassment complaint that had been declared receivable and had therefore been investigated.

35. Among the numerous pleas entered by the complainant in support of this complaint, there is one, alleging a flawed investigation process, that is decisive for the outcome of the dispute in this case as well. This plea is based on the fact that the Investigating Subpanel did

not disclose to the complainant in any manner the content of the testimony given by Ms F., the only person interviewed during the investigation apart from the complainant and Mr T.S., which prevented the complainant from commenting on that testimony if necessary.

In his complaint before the Tribunal, the complainant submits that this constitutes a breach of the adversarial principle contrary to the Tribunal's case law, in particular to what the Tribunal recalled in Judgment 3065, considerations 7 and 8:

“7. The Tribunal notes that the evidence does not show that the complainant could have attended the witnesses' interviews, or that she was offered an opportunity to comment on their testimony, in order to have certain items of information rectified where necessary, or to have it put on record that she disagreed with witnesses.

8. The Tribunal considers that even if, in the instant case, the investigator could not invite the complainant to attend all the interviews, she ought to have been allowed to see the testimony in order that she might challenge it, if necessary, by furnishing evidence.”

36. In his submissions, the complainant states that he did not request the testimony in question during the investigation, as he was not made aware of its existence during the investigation process. According to the complainant, he learned of its existence only when the decision to reject his harassment complaint was communicated to him along with the Investigating Subpanel's report, but he was not sent a transcript, summary or any other record of it.

37. The Organization contends that the first stage of its internal regulations on the examination of harassment cases, that is the investigation strictly speaking as defined in OC No. 9, is based on an inquisitorial procedure and intended solely to establish the facts and assess whether they amount to harassment. According to CERN, which expresses its agreement on this point with the JAAB's observations in its report of 1 October 2021, OC No. 9 does not indicate that an adversarial procedure should be instituted by the Subpanel when investigating harassment. The Organization adds that the Circular does not require notes of interviews with witnesses to be disclosed to the alleged victim since these notes are internal working documents. It

further observes that the complainant did not ever ask to be given the interview notes, including during the hearing before the JAAB.

38. However, the Tribunal observes, in the light of the documents in the file, that, when he lodged his internal appeal of 13 January 2021, the complainant pointed out that the Subpanel had not disclosed the testimony in question to him, thereby preventing him from commenting on it if necessary. The file does not show that the Organization responded in any way to this assertion.

The Tribunal also observes that the JAAB report clearly states that the complainant reiterated before it that, during the investigation phase, a witness had been interviewed without him being given the opportunity to confirm or refute the testimony given. On this point, although the report includes the Organization's comment that the complainant had never requested that document and that he had been free to do so during the proceedings before the JAAB, it is clear from the report that neither the Organization nor the JAAB took any action on this issue. That explains why, in its final considerations on this specific point, the JAAB merely states that the record of the Subpanel's interview with Ms F. was not sent to the complainant in accordance with OC No. 9 and expresses its understanding that the Circular does not in fact require the Subpanel to put in place an adversarial procedure during an investigation.

39. Ultimately, it is apparent from the written submissions and the evidence that the complainant pointed out that he had not received the notes of the interview with Ms F., that he complained about it, that notwithstanding he never received them in any form, and that these notes are not included in the JAAB file. The Tribunal understands that, from the Organization and the JAAB's point of view, since the adversarial principle does not apply during the investigation phase of a harassment complaint, the Organization was in any event not required to inform the complainant of the content of these interview notes in any way.

40. The Tribunal considers that both the Organization and the JAAB erred in law on this issue.

41. In Judgment 4781, consideration 9, the Tribunal relevantly emphasized the following:

“9. According to the Tribunal’s case law, an accusation of harassment made by an official requires an international organisation to investigate the matter ensuring that due process is observed, for the protection of both the person(s) accused and the accuser (see, for example, Judgments 3617, consideration 11, 3065, consideration 10, 2973, consideration 16, and 2552, consideration 3).

As a result, in the event of an accusation of harassment, the adversarial principle requires, in particular, that the accuser be kept informed of the content of statements made by the person(s) accused and any testimony gathered as part of the investigation, in order to challenge them if necessary (see Judgments 4110, consideration 4, 3617, consideration 12, and 3065, considerations 7 and 8).”

In that case, the Tribunal added the following, in considerations 10 and 11, as to the consequences of such a procedural flaw:

“10. The effect of this procedural flaw is to render unlawful the decision of 23 October 2019 to reject the complainant’s internal complaint, which had therefore been taken on the basis of an unlawful investigation.

[...]

11. It follows from the foregoing that the impugned decision of 13 August 2020 and the decisions of 23 October 2019 and 22 January 2020 must be set aside, without there being any need to rule on the complainant’s other pleas against them.”

(See also, in this connection, Judgments 4111, considerations 4 and 5, 4110, consideration 4, 4109, consideration 4, 4108, consideration 8, and 3617, considerations 12 and 13.)

42. Furthermore, in Judgment 4739, consideration 10, dealing with this question, the Tribunal underlined in particular that:

“[...]

As regards the complainant’s argument that his due process rights were violated, the Tribunal recalls its case law, recently confirmed in Judgment 4313, consideration 7, that ‘a staff member is entitled to be apprised of all material evidence that is likely to have a bearing on the outcome of her or his claims (see Judgment 2767, under 7(a)) and that failure to disclose that evidence constitutes a serious breach of the requirements of due process (see Judgment 3071, under 37)’, as well as that ‘in the context of an investigation into allegations of harassment, a complainant must have

the opportunity to see the statements gathered in order to challenge or rectify them, if necessary by furnishing evidence (see Judgments 3065, under 8, 3617, under 12, 4108, under 4, 4109, under 4, 4110, under 4, and 4111, under 4)'. Also, in Judgment 4217, consideration 4, the Tribunal held that 'by refusing to provide the complainant with the [investigation] report [...] during the internal appeals procedure it nevertheless unlawfully deprived her of the possibility of usefully challenging the findings of the investigation' and 'the fact that the complainant was ultimately able to obtain a copy of the report during the proceedings before the Tribunal does not remedy the flaw tainting the internal appeal process'.

In Judgment 4547, consideration 10, the Tribunal held that:

'It is well settled in the Tribunal's case law that an international organisation is bound to grant a request from the staff member concerned for a copy of the report delivered by the investigative body at the end of an investigation into a harassment complaint, even if that means the report must be redacted in order to maintain the confidentiality of some aspects of the investigation, in particular the testimony gathered during that investigation (see, in particular, Judgments 3347, considerations 19 to 21, and 3831, consideration 17, and also Judgments 3995, consideration 5, and 4217, consideration 4).''

43. As is evident from the above considerations, the Tribunal dismissed the reasoning followed in this case by both the Director-General in her decision and the JAAB in its opinion, according to which the adversarial principle did not apply at the investigation stage of a harassment procedure and that there was no need to disclose interview notes to the staff member concerned at that stage given that the rules applicable within the Organization did not so require.

44. It follows from the foregoing that, owing to that procedural flaw and as the Tribunal has already found, for example, in aforementioned Judgments 4781 and 4739 in similar situations to that of the present case, the Director-General's impugned decision of 21 October 2021 as well as the previous decision of 16 November 2020 on which it is based must also be set aside, without there being any need to rule on the other pleas directed against them in the fourth complaint.

45. At this stage of its findings, since the flaws identified in respect of both the first and the fourth complaints to the Tribunal denied the complainant the right to have the allegations in his harassment complaint properly investigated (see, in this respect, Judgment 4781, consideration 10), the Tribunal should in principle remit the case to the Organization for a fresh examination of the complainant's harassment complaint so that it can be dealt with fully and appropriately. However, in view of all the circumstances of the case, the Tribunal does not consider it appropriate to do so for the following reasons.

Firstly, the complainant's harassment complaint dates from several years ago and the time that has passed since it was submitted does not weigh in favour of a fresh examination. Moreover, one of the individuals concerned by the complainant's allegations of institutional harassment left the Organization several years ago, which would make it complicated and difficult to conduct an effective and comprehensive investigation. Furthermore, the complainant was assigned to another post in another department in February 2021, so he no longer has contact with the individuals who were the subject of his complaint. Finally, the performance appraisals for 2018 and 2019, on which a significant part of the complainant's grievances relating to his allegations of "institutional harassment"* were based, were dealt with in Judgments 4901 and 4902, also delivered in public this day on his two other complaints to the Tribunal.

46. In this context, the correct course is to award the complainant financial compensation for the moral injury caused by the unlawful decisions challenged in his first and fourth complaints. Since the complainant was denied his right to have his harassment complaint properly examined within a reasonable time and to receive in a timely manner the appropriate explanations for the rejection of that complaint, the Tribunal considers that this inevitably caused him moral injury that warrants redress (see, for example, in this respect Judgment 4471, considerations 20 to 22). The Tribunal finds it fair to set the

* Registry's translation.

compensation to which the complainant is entitled in the circumstances at a total amount of 20,000 euros.

47. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 7,500 euros for each complaint, that is 15,000 euros in total.

DECISION

For the above reasons,

1. The decision of the Harassment Investigating Subpanel notified to the complainant on 7 July 2020 and the implied decision rejecting the complainant's internal appeal of 1 September 2020 are set aside.
2. The Director-General's impugned decision of 21 October 2021 and her earlier decision of 16 November 2020 are also set aside.
3. The Organization shall pay the complainant 20,000 euros in moral damages.
4. It shall also pay him 15,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 13 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