

K.
v.
BIPM

139th Session

Judgment No. 4915

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. K. against the International Bureau of Weights and Measures (BIPM) on 13 October 2021 and corrected on 18 November, the BIPM's reply of 14 February 2022, the complainant's rejoinder of 17 May 2022, the BIPM's surrejoinder of 17 June, the complainant's first set of additional submissions of 15 January 2024, the BIPM's comments thereon of 20 February 2024, the complainant's second set of additional submissions of 29 April 2024 and the BIPM's final comments thereon of 28 May 2024;

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

Having examined the written submissions;

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

The complainant contests the BIPM's decision to close his harassment complaint and to reject his requests for compensation.

The complainant joined the BIPM on 4 December 2017 as Quality, Health and Safety Manager under a two-year fixed-term appointment. On 1 January 2019, his appointment was converted to an indefinite-term appointment as Quality, Health and Safety Advisor.

In November 2019, the complainant expressed the wish to work part-time in order to be able to devote more time to his family and the family business. He subsequently went on sick leave from 4 December 2019 to 15 May 2020. After his extended sick leave and several proposals by the Administration, he agreed to engage in consultation with the BIPM designated medical practitioner and he did so through a teleconsultation held on 20 May 2020. The BIPM then asked the complainant to designate a medical practitioner who would consult with its medical practitioner on the state of his health, which he did. On 25 May 2020, the two designated medical practitioners were requested to convene a Medical Board.

In early June 2020, upon the advice of the BIPM designated medical practitioner, the complainant resumed work on a 60 per cent part-time basis. On 5 June 2020, he sent an email to the BIPM Director (the Director) attaching, for his consideration, an unsolicited “proposal for a reduced position”. In early July, he met with the BIPM Legal Advisor to discuss his proposal, further to which he appointed a counsel. The Director agreed to discuss the complainant’s proposal and a meeting to this end was scheduled for 15 July 2020. Nevertheless, prior to the meeting, on 10 July 2020, the complainant’s counsel sent to the Legal Advisor an email proposing to discuss at the upcoming meeting the complainant’s separation from the BIPM and attaching a draft separation agreement which provided, inter alia, for the payment to the complainant of a lump sum equivalent to 72 months’ net salary and the reimbursement of his United States taxes paid on his BIPM income for 2018, 2019 and 2020. The meeting was held as scheduled on 15 July 2020 and, on 17 July 2020, the BIPM Legal Advisor responded to the complainant’s counsel that the BIPM would consider the complainant’s separation request notwithstanding its readiness to accommodate his proposal for “a reduced position” and thus enable him to remain in service. On 24 July 2020, the Legal Advisor sent to the complainant’s counsel a draft separation agreement according to which the BIPM offered to pay the complainant three months’ base salary and end-of-service allowances, adding up to a lump sum payment of 97,752.49 euros, and to provide him and his dependants with health insurance coverage for a period of six months after separation. By an

email of 28 July 2020, the complainant's counsel turned down the BIPM's offer because "[t]he compensation proposed [was] not of a magnitude which could allow [the complainant] to leave the BIPM pursuant to a mutual agreement". Meanwhile, the complainant was placed on sick leave from 24 July to 18 October 2020.

In a letter of 22 September 2020 to the Director, the complainant alleged that from the beginning of his employment with the BIPM he had been subjected to harassment by the BIPM Administration, in particular the Director himself and four other BIPM officials. He asserted that these individuals had not only belittled, disavowed, shamed, and embarrassed him, but had also communicated with him in a way that reflected a lack of respect and undermined his authority, thus depriving him of actual means to perform his functions. The complainant further alleged that he had suffered harassment as a result of deception, notably with regard to the non-reimbursement of the United States taxes paid by him on his BIPM income. He reproached the Director for his "changing whims" regarding the workload and nature of his work and for his poor management of the "strained relationship" in the team and asserted that the hostile and toxic work environment had seriously affected his health. He requested (i) an investigation into his allegations and appropriate follow-up action, in particular disciplinary action against the alleged perpetrators; (ii) recognition of his illness as an occupational disease, i.e. attributable to the performance of BIPM duties; and (iii) an award of two years' full emoluments in compensation for the illness he had suffered due to harassment. On 23 September 2020, the Director acknowledged the complainant's letter alleging harassment. On 25 and 28 September 2020, the complainant provided the BIPM with further details and documentation in support of his harassment allegations.

On 30 September 2020, while on sick leave, the complainant tendered his resignation with effect from 31 December 2020 and requested that he be relieved from the obligation to perform his functions during the remaining three-month period but that he continue to receive his emoluments. By a letter of 6 October 2020, the Director accepted the complainant's resignation, invited him to use his

outstanding annual leave to cover the remaining period and offered to place him on special leave with pay upon exhaustion of his annual leave. On 8 October 2020, the complainant requested the BIPM to provide his counsel with a full copy of his personal file so he could fully exercise his rights.

On 3 December 2020, the Medical Board – that had convened earlier that year to assess the complainant’s health and fitness for work – submitted its report concluding that the complainant was not fit for work. Soon after, on 23 December 2020, the complainant underwent the prescribed medical examination upon his departure from service by the BIPM medical practitioner, who expressed the view that the complainant was not suffering from an occupational illness.

Meanwhile, the Administration engaged an external investigation firm to review the complainant’s harassment allegations and relevantly informed the complainant. After a preliminary assessment, the external investigation firm conducted a full investigation and issued its investigation report on 12 February 2021. The investigation report found that, while the documentation provided by the complainant corroborated some of the alleged incidents, it did not provide evidence of mistreatment or harassment by the alleged subjects. The investigation report could not establish a connection between the behaviour of the alleged subjects and the complainant’s health and considered the incidents reported by the complainant as “one off, robust discussion[s]” of work-related matters where there was a difference of opinion. It concluded that none of the complainant’s allegations were substantiated. A copy of the investigation report was submitted to the President of the International Committee for Weights and Measures (CIPM), to whom the Director had previously, on 12 November 2020, delegated the competence to decide upon the allegations of harassment against himself. On 24 February 2021, the CIPM President communicated to the Legal Advisor his decision to close the case against the Director. This decision was also transmitted to the Director.

By a letter of 26 February 2021, the Director informed the complainant of the conclusions of the investigation, of the CIPM President’s decision to close the case, and of his decision to reject his

22 September 2020 requests (for financial compensation, recognition of his illness as attributable to the performance of official duties, and disciplinary action against the alleged subjects), and to consider the matter closed. Attached to the letter was a redacted copy of the investigation report. On 30 March 2021, the complainant submitted a request for rescission, contesting the Director's 26 February 2021 decision and the content of the CIPM President's 24 February 2021 decision. He argued, *inter alia*, that the Director's 26 February 2021 decision to close the case was adopted in breach of his due process rights, in breach of the duty of care owed to him, as evidenced by the BIPM's deliberate concealment and deception regarding the disclosure of his medical file and the reimbursement of his United States income taxes, and that it was based on mistaken conclusions. He requested that (i) the 26 February 2021 decision be rescinded; (ii) that his illness be recognized as work-related and that he be accorded all his rights under the applicable rules; and (iii) that he be awarded financial compensation for the moral injury and illness in the amount of three years' full emoluments.

In a letter of 30 April 2021, the Director rejected the request for rescission, confirmed the decision to close the case regarding the complainant's allegations of harassment, dismissed his request for financial compensation and discarded his request for the reimbursement of his United States income taxes. The Director also dismissed the complainant's claim of service-incurred illness, but he nevertheless offered to reconvene a Medical Board to determine the possible occupational nature of the complainant's illness and invited him to designate a medical practitioner. The Director added that should the complainant accept the offer, he would ensure that his medical file be transmitted to his medical practitioner. On 7 May 2021, the complainant's counsel wrote to the Director to inform him that the complainant would proceed to designate a medical practitioner and he requested to be provided with the complainant's medical file. In the event, the name of the complainant's designated medical practitioner was provided to the Administration on 25 June 2021.

Also on 7 May 2021, the complainant's counsel submitted a request for an advisory opinion to the Appeals Committee on the same grounds put forward in his request for rescission. The Appeals Committee submitted its Advisory Opinion on 7 July 2021. Taking note of the fact that a Medical Board had been constituted and a copy of the complainant's full medical file would be provided to it and the complainant himself, as confirmed by the Legal Adviser, the Appeals Committee concluded that an opinion from it on the possible work-related character of the complainant's illness was not required in the circumstances. The Appeals Committee further concluded that no manifest error had been established in the investigative process and that there was no sufficient ground to annul the Director's decision to close the matter. It thus recommended that the Director's decision be confirmed. The Appeals Committee also made three recommendations of a general nature.

By a letter of 16 July 2021, the BIPM Director informed the complainant that he had decided to reject his claims. Specifically, the Director explained that he could not consider the complainant's illness service-incurred, in view of the results of his medical examination on departure, but recalled that he had reconvened a Medical Board to determine the possible occupational nature of his illness and had requested that his full medical file be provided to him and his medical practitioner. Concurring with the Appeals Committee that the complainant had failed to substantiate his allegations of harassment and that his due process rights had been fully respected, the Director confirmed his decision to close the case of harassment. Finally, the Director rejected the complainant's request for the reimbursement of his United States taxes paid on his BIPM income on the basis that there was no "tax-reimbursement arrangement" in place with the United States of America and the State Department authorities had confirmed they were not inclined to conclude one. This is the decision the complainant impugns in this complaint filed with the Tribunal on 13 October 2021.

Some two years after the filing of this complaint, on 13 September 2023, the Medical Board reconvened and concluded that the complainant's illness was attributable to the performance of official duties, i.e. an occupational disease. The Board's conclusion was transmitted to the Director in the form of a document entitled "*Procès-verbal de la commission médicale du BIPM concernant [le requérant]*", i.e. "Minutes of the Medical Board of the BIPM regarding the complainant's case", dated 15 December 2023. This document is attached to the complainant's additional submissions to the Tribunal.

In a letter of 13 March 2024, the BIPM Director informed the complainant that although he considered the Medical Board's "*Procès-verbal*" an insufficient basis to determine with certainty the occupational origin of his illness, he had nevertheless decided to accept the Board's conclusion and to pay him the emoluments to which he was entitled and which amounted to 10,449.49 euros, as well as the sum of 2,000 euros in compensation for the expenses he might have had to cover for the involvement of his medical practitioner in the Medical Board. The Director added that all the medical expenses incurred by the complainant up until 31 December 2020 had been reimbursed and invited him to submit any outstanding invoices for expenses incurred up to the end of 2020.

On 20 April 2024, the complainant submitted a request for rescission of the 13 March 2024 decision requesting payment of accrued interest on the amounts already awarded at the rate of 3 per cent per annum, amounting to 940.31 euros; moral damages for negligence and the excessive length of the internal procedure in an amount equal to 36 months of his last emoluments; 25,000 euros in legal costs; 21,480 euros minus 2,000 euros in compensation for the expenses he had covered for the involvement of his medical practitioner in the Medical Board, i.e. the difference between his actual expenses and the amount paid to him. By a letter of 21 May 2024, the Director rejected these requests and confirmed his 13 March 2024 decision.

The complainant asks the Tribunal to set aside the impugned decision and to draw all legal consequences therefrom, in particular to order the BIPM to pay him an amount corresponding to two years of his

last emoluments. He claims compensation in an amount corresponding to one year of his last emoluments for the moral injury he suffered due to the BIPM's illegal decisions, violation of due process, and breach of its duty of care. He also claims costs in an amount to be determined at the end of the proceedings.

The BIPM asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant applies for oral proceedings. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Thus, the request is rejected.

2. The following discussion proceeds against the background already set out in the facts described above.

3. At the outset, it is appropriate to establish the scope of the present complaint. The 30 April 2021 decision, issued upon the complainant's request for rescission, while dismissing the complainant's contention that his disease was work-related, proposed to convene a Medical Board, subject to the complainant's consent, to assess his claim that his illness was work-related. By letter of 7 May 2021, the complainant's counsel agreed to this proposal. However, that same day, the complainant submitted a request for an advisory opinion to the Appeals Committee challenging the 30 April 2021 decision also on the medical aspects. The Appeals Committee considered that a Medical Board had been constituted in the meantime and, thus, the medical aspect was no longer an issue to be addressed by it; in other words, it was no longer required to assess the claim that the illness was work-related.

In the present complaint, there are no specific pleas concerning the impugned decision and the Appeals Committee's opinion in this respect. Whilst the present proceedings were pending, the Medical

Board issued its opinion on 13 September 2023 acknowledging that the complainant's illness was an occupational disease. The BIPM Director (the Director) adopted a decision on 13 March 2024, which he confirmed by a decision issued on 21 May 2024, following the complainant's request for rescission lodged on 20 April 2024. In his decisions, the Director partially departed from the Medical Board's opinion. Indeed, the Director awarded the complainant the statutory amount claimed for occupational disease without conceding that the organization was clearly liable, indicating that it could not be determined with certainty that the complainant's illness was service-incurred. He also strongly criticised the Medical Board's assessment, which he considered "m[ight] [have been] affected by blatant errors". Moreover, in his 21 May 2024 decision, the Director dismissed the complainant's claim to be awarded, in addition to the compensation payable under the BIPM Staff Manual, moral damages both for the alleged negligence related to his illness and the alleged excessive length of the procedure. In light of the applicable rules, in cases where a Medical Board is convened and the two designated doctors disagree, they shall both appoint a third doctor by mutual agreement. In such a case, the staff member concerned and the BIPM "accept that the decision of the Medical Board composed of these 3 doctors shall be final", according to Rule 14.5.11 of the BIPM Staff Manual. Although the Medical Board's opinion might conceivably be a final decision open to challenge directly before the Tribunal, pursuant to Article VII, paragraph 1, of the Tribunal's Statute, this is not the case with regard to the Director's 21 May 2024 decision, which addressed further issues and cannot be considered a final decision as it was open to challenge through an internal appeal, as also stated in the 21 May 2024 decision itself. Accordingly, any claims concerning the complainant's illness for the purpose that it be acknowledged as an occupational disease, as well as any claims dismissed by the 21 May 2024 decision, are outside the scope of the present complaint, and they are, in any event, irreceivable for failure to exhaust the internal means of redress.

4. The complainant advances his pleas under three headings as follows:

- (1) breach of the due process owed to him;
- (2) breach of the duty of care owed to him; and
- (3) failure to provide him with a safe and adequate work environment.

The first heading, breach of the due process, contains subheadings, which may be summed up as follows:

- (i) conflicts of interest, as the Director, the President of the International Committee for Weights and Measures (CIPM), and one of the members of the Appeals Committee had a conflict of interest;
- (ii) wilful deprivation of the complainant's medical file;
- (iii) questionable independence of the investigators, as they received instructions from the Director and the CIPM President, and failed to interview all 13 witnesses identified; the investigators interviewed only six of them, without any convincing justification.

It is appropriate to sum up the complainant's arguments, contained in his first plea, concerning conflicts of interest which are decisive for the adjudication of the case.

The complainant alleges that the CIPM President, the Director, and a member of the Appeals Committee had a conflict of interest. On the basis that the CIPM President decided upon the complainant's allegations of harassment against the Director, whilst the Director decided upon the allegations of harassment against the four other officials, with regard to the CIPM President, the complainant contends that:

- (i)(1) the allegations against the Director should have been decided by the CIPM as a whole, in its capacity as the Director's appointing authority, and not by its President;
- (i)(2) the CIPM President was in a conflict of interest, as he was clearly influenced by the fact that he had previously reviewed other claims submitted by the complainant; and
- (i)(3) as a result, the CIPM President did not properly review the investigation report.

As to the Director, the complainant contends that:

- (i)(4) all the Director's decisions are tainted by a conflict of interest, as the complainant's claims, including his claim of harassment as a result of deception, mobbing, and unethical conduct, were directed first and foremost against the Director himself;
- (i)(5) the Director could not take a decision regarding the claims against the other officials, as these claims were also related to the same case; they were similarly tainted by a conflict of interest because the decisions to be taken entailed a judgment on the Director's attitude in support of those officials.

As to the Appeals Committee, the complainant contends that one member had a conflict of interest, since that member participated as a witness in the investigation opened by the BIPM. He adds that the existence of the conflict of interest could not have been decided, or indeed lifted, by the President of the Appeals Committee, who dismissed the doubts raised in this respect by the BIPM during the appeal proceedings. The BIPM replies that the complainant was informed in due time of the composition of the Appeals Committee and did not raise any objections of partiality.

5. In order to address the allegations of conflicts of interest, the Tribunal recalls, in brief, the chronology of the events leading to the decisions allegedly tainted with a conflict of interest:

- (1) on 22 September 2020, the complainant lodged a harassment complaint against the Director and four other officials, and provided further details on 25 and 28 September 2020;
- (2) by email of 12 November 2020, the Director delegated to the CIPM President the competence to decide upon the allegations of harassment against himself;
- (3) upon completion of the investigation carried out by an external investigator, on 24 February 2021, the CIPM President decided to close the case with regard to the Director, and on 26 February 2021, the Director decided to close the case with regard to the four other officials;

- (4) on 30 March 2021, the complainant lodged a request for rescission, contesting the content of the CIPM President's 24 February 2021 decision and the Director's 26 February 2021 decision; this request for rescission was dismissed in a single decision made by the Director on 30 April 2021; and
- (5) the complainant lodged an internal appeal against the 30 April 2021 decision, which was dismissed by the 16 July 2021 decision, issued by the Director.

The contention that the allegations against the Director should have been decided by the CIPM as a whole, rather than by its President, is unfounded. The CIPM is the Director's appointing authority, and, pursuant to the relevant rules, it is competent to terminate the Director's appointment, to initiate a disciplinary action against the Director, and to take the decisions related to the conditions of employment of the Director. The relevant rules do not expressly address the issue at stake in the present proceedings, but the structure of the rules as a whole makes it sufficiently clear that they intend to confine the CIPM's competence to the main decisions directly involving the Director, that is to say the appointment, the termination of the appointment, the conditions of employment, and does not include harassment proceedings lodged by other staff members and involving the Director, unless the decision to be taken is a disciplinary sanction against the Director. In the present case, the process in question was not a disciplinary process against the Director, but a process prompted by a harassment complaint. The competent authority was, in principle, the Director, and, as the Director could not decide upon a harassment complaint lodged against himself, he was lawfully replaced by the CIPM President and not by the CIPM as a whole.

As to the contention that the CIPM President and the Director were both in a conflict of interest, the Tribunal recalls its precedents concerning conflicts of interest. The Tribunal's case law states that it is a general rule of law that officials who are called upon to take a decision affecting the rights or duties of other persons subject to their jurisdiction must withdraw in cases in which their impartiality may be open to question on reasonable grounds. It further states that it is immaterial

that, subjectively, the officials may consider themselves able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice (see, for example, Judgments 4240, consideration 10, and 4234, consideration 3). A conflict of interest occurs in situations where a reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality. Even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest (see Judgment 3958, consideration 11). However, an allegation of conflict of interest or lack of impartiality has to be substantiated and based on specific facts, not on mere suspicions or hypotheses. The complainant bears the burden of proof of conflict of interest (see Judgments 4711, consideration 5, 4617, consideration 9, and 4616, consideration 6).

In light of the Tribunal's case law, there is no evidence of a conflict of interest with regard to the CIPM President. Firstly, contrary to the complainant's contention, there is no evidence in the file that the CIPM President had, in the past, reviewed any of the complainant's claims. In his 24 February 2021 decision, the CIPM President only acknowledged that over the years he "was kept informed of the situation, and [he] had personal experience of how some of the issues were handled". Secondly, in any event, even if it were to be assumed that the CIPM President had, in the past, reviewed some of the complainant's claims, this mere fact does not prove that he had prejudice against the complainant when he decided the harassment complaint.

As to the Director's alleged conflict of interest, the Tribunal considers that his impartiality was open to question on reasonable grounds.

The complainant's harassment complaint, lodged on 22 September 2020 and expanded on 25 and 28 September 2020, accused the Director and four other officials of harassment. The complainant contended that he was the victim of an orchestrated harassment, and that not only did the Director harass him, he also tolerated the alleged hostile work environment, and instead, for seeking to manage the strained working relationships, he "let them develop and expand". The Director was one of the five officials subject to the external investigation and was

interviewed during the investigation process. In such a situation, the Director could not decide upon the harassment allegations lodged against himself. Nor could he decide on the harassment allegations lodged against the four other officials. Indeed, the complainant did not report separate and independent harassing behaviours by each of the accused officials individually, but, rather, an orchestrated harassment against him and accused the Director of tolerating that harassment against him. Thus, the allegations against the Director and the four other officials were interconnected and, in deciding the allegations against the four officials, the Director might have had an interest in denying the harassment in order to shield himself from the allegation of having tolerated it. The Director should have recused himself from the whole case and not only from deciding upon the allegations against himself, which is what he did in his 12 November 2020 email, by which he delegated to the CIPM President the authority to decide upon only the allegations against himself.

The mere fact that the Director decided to close the case against the other four officials only after the CIPM President had closed the case against the Director, did not eliminate the conflict of interest. On the one hand, the Director's failure to delegate the decision-making authority on the whole case to the CIPM President was unlawful. On the other hand, the CIPM President's decision on the allegations against the Director was a decision open to challenge. Thus, for as long as the CIPM President's decision was open to challenge, the Director maintained an interest in deciding the allegations against the other four officials in a way which would not negatively affect his personal position with regard to the related harassment allegations brought against him.

In the circumstances of the case, the Tribunal considers that the Director had a conflict of interest that required him to withdraw from the case completely. This alone casts doubt on the Director's impartiality. Considering the whole situation, a reasonable person would think that the Director would not bring a detached, impartial mind to the issues involved. In brief, since the complainant reported an orchestrated harassment against him, the case should not have been split

into two separate decisions; it should have been decided as one case in a single decision by the CIPM President. Accordingly, the decisions adopted by the Director, namely the 26 February 2021, 30 April 2021, and 16 July 2021 decisions, are unlawful as they are tainted with a conflict of interest. Moreover, whilst in the 26 February 2021 decision the Director only decided on the harassment allegations lodged against the other four other officials, in the 30 April 2021 and 16 July 2021 decisions he also decided upon the harassment allegations against himself. It is manifest that he should not have been simultaneously the subject of the investigation and the decision-making authority on the outcome of that investigation.

6. The Tribunal's finding on the Director's conflict of interest constitutes a decisive and fatal flaw in the impugned decision of 16 July 2021, as well as in the 26 February 2021 and the 30 April 2021 decisions, and there is no need to address the other pleas advanced by the complainant.

Indeed, all other pleas, already submitted by the complainant in his 30 March 2021 request for rescission, and reiterated before the Tribunal, must be addressed by the competent and impartial authority, the CIPM President, prior to the adjudication of the matter by the Tribunal, which presupposes that a final decision is issued by the competent and impartial authority.

7. As a new administrative decision is required, subject to internal appeal, it is not essential to address the complainant's plea concerning the alleged conflict of interest of a member of the Appeals Committee. However, it is convenient to do so. The Tribunal observes that Rule 18.5.3 of the BIPM Staff Manual, entitled "Incompatibilities of Appeals Committee members", provides that:

"The Appeals Committee shall not include any member involved in the process leading up to the case, in relation with his functions or a mediation procedure. This member is hence replaced by his substitute."

The Tribunal notes that, in principle, persons who played a role as parties, decision-making authorities, or witnesses in administrative proceedings should not act as members of the internal appeal body in

ensuing internal appeal proceedings. In the context of the BIPM, failure to respect this would amount to “incompatibility” within the meaning of Rule 18.5.3, and would, in any event, be inconsistent with the Tribunal’s case law concerning due process and the impartiality of an internal appeal body. Relevantly, in Judgment 3732, consideration 3, the Tribunal held that the member, whose participation in the internal appeal body was contested in that case, could not be a member of the internal appeal body assessing the complainant’s appeal if he had been interviewed by the Internal Auditor, since the internal appeal body had to assess the testimonies on which the Internal Auditor’s report was based. In those circumstances, the contested member’s impartiality might be open to question as there were reasonable grounds for concluding that there was an actual conflict of interest, not merely a perceived conflict (see Judgments 2671, consideration 10, and 2225, consideration 19). The fact that the decision of an appeal body is reached unanimously does not eliminate the flaw in the process due to the participation in the decision-making of a member who should have recused themselves. Indeed, the participation in an appeal body of a member having a conflict of interest may influence the decision-making of the other members (see Judgment 4772, consideration 12). Accordingly, the Appeals Committee member, Mr M., who was heard as a witness in the investigation process, and in this capacity referred to specific episodes involving the complainant and the Director, should not have participated in the appeal proceedings as a member of the Appeals Committee, irrespective of the fact that the Appeals Committee adopted its opinion unanimously. The Tribunal further notes that the BIPM Staff Manual does not establish a time limit for raising objections of partiality towards the members of the Appeals Committee. Accordingly, contrary to the BIPM’s contention, the plea concerning the unlawful composition of the Appeals Committee for failure of one of its members to recuse himself, cannot be considered time-barred.

8. The 16 July 2021 decision, as well as the 26 February 2021 and the 30 April 2021 decisions, will be set aside. It is appropriate to note that the 30 April 2021 decision is set aside only to the extent it has been challenged in the present complaint (see consideration 3 above).

Thus, the part of the 30 April 2021 decision concerning the convening of a Medical Board, which is favourable to the complainant, is not set aside.

The case is sent back to the BIPM, for a new decision to be taken on the complainant's harassment complaint of 22 September 2020 against the four officials other than the Director, and on the complainant's 30 March 2021 request for rescission of the 24 February 2021 decision of the CIPM President concerning the allegations against the Director. It is open to the CIPM President to assess whether it might be appropriate for him to withdraw his 24 February 2021 decision and adopt a single decision on the allegations of harassment against the Director and the four other officials, to be considered and assessed as a whole.

Upon decision by the CIPM President on the harassment complaint against the four other officials and the Director, the complainant will have to avail himself of the internal remedies, if required, before applying to the Tribunal.

9. The complainant's claim for material and moral damages may only be allowed, if the complainant prevails on his substantive pleas. Inasmuch as the present complaint succeeds on procedural grounds and the case will be remitted to the BIPM, his claim for material and moral damages remains in abeyance. At this stage, the complainant is entitled to moral damages only for the breach of due process stemming from the conflict of interest. The Tribunal deems it just and fair to award him 15,000 euros in moral damages in this respect.

10. The complainant is entitled to costs for the present proceedings in the sum of 10,000 euros.

DECISION

For the above reasons,

1. The 16 July 2021 and 26 February 2021 decisions are set aside.
2. The 30 April 2021 decision is set aside in part, as clarified in consideration 8 above.
3. The case is sent back to the BIPM for the purpose indicated in consideration 8 above.
4. The BIPM shall pay the complainant 15,000 euros in moral damages.
5. It shall pay him costs in the sum of 10,000 euros.
6. All other claims are dismissed.

In witness of this judgment, adopted on 21 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER