Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (No. 6)

v.

UNESCO

139th Session **Judgment No. 4922**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 20 September 2022 and corrected on 27 September 2022, UNESCO's reply of 28 December 2022, the complainant's rejoinder of 9 March 2023 and UNESCO's surrejoinder of 12 June 2023;

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

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

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

The complainant challenges the decision to close his complaint of moral harassment at the end of the preliminary assessment procedure.

The complainant joined UNESCO on 2 December 2002 as a grade G-3 security officer, assigned to the Security Unit within the Security and Safety Section, under a two-year fixed-term appointment that was renewed several times until 5 November 2021, when his appointment was terminated by the Organization on disciplinary grounds.

On 20 October 2016 Mr K., a security officer and the complainant's colleague, sent the then Chief of the Security and Safety Section a detailed report concerning, inter alia, purported "[a]busive remarks [made concerning security] officers"* that had been addressed to him that same day by Mr D., Deputy Chief of Section. Four other security officers were present at the material time, but not the complainant.

On 31 October 2016 the complainant – who felt that the "insulting and abusive remarks"* reported by his colleague were directed at him – submitted an internal complaint against Mr D., alleging, in particular, an affront to his dignity and that of his profession. He appended Mr K.'s detailed report as well as the minutes of an internal meeting held by security officers on 17 May 2015 that had been sent to the Chief of the Security and Safety Section on 1 June 2015 and referred to their "difficult management relationship"* with Mr D. He requested that an investigation be conducted into his internal complaint.

On 5 December 2016 a meeting took place between the complainant, the then Ethics Adviser, Ms T., and the Ethics Officer, Mr Do. UNESCO asserts – but is vehemently contradicted by the complainant – that the latter was informed at this meeting that, since he was not present during the incident of 20 October, his internal complaint was "not receivable"* according to the Anti-harassment Policy applicable at the material time. Nevertheless, he was told that the information contained in his internal complaint, including in its annexes, would be forwarded for all purposes to the senior management of the Security and Safety Section.

The same day, the complainant sent an email to Ms T. to "share [his] impressions with [her]"* of what had been said at the meeting in question. He did not refer to his internal complaint being closed or forwarded to his superiors. He merely stated that, in his view, Ms T. had minimised the seriousness of Mr D.'s behaviour during the discussion, although "the way [Mr D. had] long treated and belittled"*

* Registry's translation.

security officers was "quite simply scandalous and totally unacceptable and unforgivable"*.

On 16 December 2016, during a meeting with the security officers, the Assistant Director-General for External Relations and Public Information explained that, after consulting the parties concerned by the incident of 20 October and with the support of the Ethics Office, he had taken steps to end the dispute.

By an email of 19 December 2016, the complainant wrote to Ms T. enquiring about the "official status"* of his internal complaint against Mr D. He reiterated his enquiry on 10 January 2017.

On 31 May 2017 Mr D. retired. His successor officially took up his duties on 22 January 2018.

On 31 October 2018 Ms T. left UNESCO. She was replaced from 1 February 2019 by a new Ethics Adviser, Ms D. On 19 June 2019 a new Anti-harassment Policy was introduced within the Organization. In particular, it provided that formal internal complaints should henceforth be sent directly by the person concerned to the Internal Oversight Service (IOS). On 31 July 2019 the former Chief of the Security and Safety Section also left the Organization.

On 2 February 2020 the complainant – who explains his silence over several years by his fear of retaliation following what he describes as "threats"* made by the former Chief of Section on 6 December 2016 and who considers that those threats materialised during his biennial performance appraisal for 2016-2017 – sent an email to the Director IOS and Ms D. "to ascertain the official status"* of his internal complaint of 31 October 2016. He stated that, since the meeting of 5 December 2016, he had not received any official response regarding this matter, despite his numerous requests.

On 4 February 2020 the Ethics Office, drawing his attention to the fact that his email of 2 February referred to a period before the new Ethics Adviser took up her position, confirmed that it had reviewed the file, including the previous emails sent to Ms T. which had remained

* Registry's translation.

unanswered – a circumstance that was described as "regrettable"*. Noting that in 2016 Ms T. "had deemed it appropriate for [his case] to be managed administratively, rather than conducting an investigation"* and that she had therefore "raised the information of which [the complainant had] apprised her with [his] superiors"*, the Office concluded that it was impossible for it to reopen the file, especially in the light of the fact that, since the new Anti-harassment Policy had taken effect on 19 June 2019, it had not been responsible for formal internal complaints of harassment.

On 25 February 2020 the complainant sent the Director-General an "[i]nformal protest against the administrative decision of the Ethics Office [of 4 February] to close [his] complaint without taking action"*. On 28 March 2020 he submitted a notice of appeal against that same decision, then on 30 March he sent a detailed appeal to the Appeals Board.

Meanwhile, France – UNESCO's host State – declared a national lockdown due to the Covid-19 pandemic, which was subsequently reinstated on two occasions. According to the Organization, this delayed the handling of the appeal.

On 26 March 2021 the Organization submitted its reply to the Appeals Board appending a witness testimony, signed by Mr Do. and dated 15 January 2021, stating that Ms T. had explained to the complainant at the aforementioned meeting of 5 December 2016 that his internal complaint was irreceivable.

In the opinion it delivered on 2 May 2022 having heard the parties, the Appeals Board recommended that the appeal be dismissed as irreceivable on the grounds that the complainant had been notified of the status of his internal complaint at the meeting of 5 December 2016 and that his protest of 25 February 2020 was therefore time-barred. By a letter of 22 June 2022, the complainant was informed that the Director-General had decided to follow the recommendation of the Appeals Board "without prejudice to the objection to receivability based on [his] lack of cause of action"*. That is the impugned decision.

* Registry's translation.

The complainant asks the Tribunal to set aside the impugned decision and seeks compensation of 50,000 euros for the moral injury he considers he has suffered, as well as an award of costs in the amount of 5,000 euros.

UNESCO contends that the complainant did not comply with the time limits for submitting his protest and argues subsidiarily that the protest was not directed against an administrative decision open to challenge, so that the complainant has no cause of action. It also asserts that the internal appeal and, by extension, the complaint before the Tribunal have become moot given that on 16 December 2016 security officers were informed that steps had been taken to end the dispute that had arisen on 20 October 2016. Lastly, it raises an objection to the receivability of the complainant's claim for moral damages, on the basis that the sum claimed has been increased in comparison to the one claimed in the internal appeal procedure. Accordingly, the Organization asks the Tribunal to dismiss the complaint as irreceivable or, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 22 June 2022 by which the Director-General of UNESCO, in accordance with the recommendation of the Appeals Board, rejected as irreceivable his internal appeal against the decision to close an internal complaint of "insulting and abusive remarks"* that he had submitted on 31 October 2016 against Mr D., Deputy Chief of the Security and Safety Section.

The internal complaint was primarily based on the allegedly offensive remarks concerning all security officers that Mr D. had made on 20 October 2016 to a security officer, Mr K., in the presence of four other staff members from the Section. According to a detailed report of the incident compiled by Mr K., which was appended to the complainant's internal complaint, Mr D. had in particular referred to

* Registry's translation.

security officers as "guard dogs"* in a pejorative manner. The minutes of an informal meeting by security officers on 17 May 2015 – which were also appended to the internal complaint – show that this event took place against the backdrop of their extremely strained management relationship with Mr D., whom they accused of frequently speaking to them in an offensive or inappropriate manner.

Although the complainant himself had not been present during the incident of 20 October 2016, he considered, "as a security officer"*, that "[his] dignity and that of [his] profession"* had been insulted by Mr D.'s remarks, as he put it in his internal complaint.

The internal complaint was regarded by the competent bodies of the Organization as a complaint of moral harassment which, in the Tribunal's view, is indeed the appropriate characterisation considering its content.

2. UNESCO submits that the complaint before the Tribunal is moot because the Assistant Director-General for External Relations and Public Information (under whose authority the Security and Safety Section fell at the time), in agreement with the Ethics Adviser, took individual measures against Mr D. on account of the conduct referred to above, which were announced to all security officers at a meeting on 16 December 2016. As these measures were taken after the conduct had been reported by staff members present at the incident of 20 October – including Mr K. himself – the Organization believes that it can argue that "the main case has been conclusively settled to the satisfaction of all parties involved"*.

However, the Tribunal considers that the circumstances referred to are not such as to render the complaint legally moot, since the complainant nevertheless retains an interest in challenging the closure of his own internal complaint of harassment and in obtaining compensation for the injury he considers he has suffered in the present case (see for example, for a comparable situation, Judgment 3995, consideration 9).

* Registry's translation.

3. The impugned decision of 22 June 2022 rejecting the complainant's appeal is based on the fact that the appeal was irreceivable because the complainant had not lodged a protest against the decision to close his internal complaint within the one-month time limit provided for by paragraph 7(a) of the former Statutes of the Appeals Board. According to the Appeals Board's assessment in its opinion of 2 May 2022, which was endorsed by the Director-General, the decision to close the internal complaint had indeed been notified to the complainant on 5 December 2016 at a meeting with the then Ethics Adviser, Ms T., and the Ethics Officer, Mr Do.

This assessment was based in particular on the written testimony prepared by Mr Do. at the Organization's request on 15 January 2021 to testify to the content of the meeting in question during the appeal procedure, which stated the following:

> "Ms [T.] [...] explained [to the complainant] that the anti-harassment policy in effect at the time could not apply to the formal complaint because he was neither the alleged 'victim' of nor a direct witness to the conduct he alleged. [...] Ms [T.] concluded the meeting by explaining [to the complainant] that the Ethics Office could not consider his formal complaint receivable but that the colleagues present at the time who were directly affected by Mr [D.]'s remarks could contact the Ethics Office directly, which had also raised the incident with Mr [D.]'s superiors."*

It should be specified that the "anti-harassment policy" referred to in the testimony is the former Anti-harassment Policy in effect at the material time, which was set out in Item 18.2 of the Human Resources Manual.

4. The complainant categorically denies that Ms T. informed him verbally that his internal complaint had been closed at the meeting in question. He submits that the discussion at the meeting mainly concerned, in fact, the conduct alleged in the internal complaint – the seriousness of which he accused Ms T., in an email sent on the evening of 5 December, of having minimised – and not the internal complaint's receivability. According to him, it was only when he received an email from the Ethics Office on 4 February 2020 replying to a message that

* Registry's translation.

he had sent on 2 February enquiring about the status of the internal complaint that he understood that it had been closed. The email in question (dating from a time when Ms T. had been replaced by a new Ethics Adviser) had stated that the Office "note[d] that in 2016 Ms [T.] had deemed it appropriate for the case to be managed administratively, rather than conducting an investigation"*. Moreover, it was the decision that, in his view, was contained in the email of 4 February 2020 that he challenged in the internal appeal procedure.

5. It should be stated at the outset that, in view of the evidence on file, the Tribunal has no doubt as to the honesty of Mr Do.'s written testimony of 15 January 2021 and the truth of its account of the facts. The complainant observes that, as Mr Do. himself pointed out in the testimony, it referred to a meeting that had taken place more than four years earlier, certain points of which he could only vaguely recall. However, in the Tribunal's view, the precautions taken to carefully define the limits of the testimony only serve to underscore the author's desire to adhere to the truth and thus to strengthen the credibility of his assertions of the facts which he recollected clearly. Furthermore, the Tribunal notes that the internal complaint of "untrue statements"* which the complainant had considered himself compelled to submit against Mr Do. on account of the testimony in question had been closed at the screening stage by a decision of the Director of the Internal Oversight Service of 16 April 2021 for "lack of evidence calling into question the veracity of the contested statements"*. However, by Judgment 4923, also delivered in public this day, the Tribunal, in ruling on the complainant's tenth complaint concerning the challenge to the closure of that internal complaint, upheld the lawfulness of that decision of closure – although it set aside the final decision impugned in that case due to a defect in the internal appeal procedure. The debate initiated by the complainant on the alleged falsity of this testimony is thus conclusively closed.

* Registry's translation.

6. The Tribunal considers that it can be inferred from Mr Do.'s written testimony – although, as will be pointed out below, he did not explicitly state so in that document – that Ms T. had intended, at the meeting of 5 December 2016, to inform the complainant of a decision to close his internal complaint.

There can be no objective doubt as to the existence of this decision as such. Indeed, the file shows that, following the meeting of 5 December 2016, Ms T. ended any investigation into the complainant's internal complaint, which shows that she had in fact closed it. Furthermore, the aforementioned email of the Ethics Office of 4 February 2020, as it mentioned that Ms T. had decided in 2016 that "the case [would] be managed administratively, rather than conducting an investigation"*, confirmed that the internal complaint had been closed at that time.

The fact that the decision to close the internal complaint was not formalised in writing does not of itself prevent its existence from being recognised – however inadvisable this approach may appear in a sensitive and highly regulated area such as the handling of complaints of harassment. Indeed, according to the Tribunal's case law, an administrative decision may take any form if its existence may be inferred from a factual context demonstrating that it was actually taken (see in particular Judgments 3749, consideration 5, 3505, consideration 8, or 3141, consideration 21).

On this point, the complainant's argument that a verbal decision could not exist at UNESCO because paragraph 7(e) of the former Statutes of the Appeals Board referred to the date on which a decision had been "sent" for the purposes of determining the day on which it was notified, is unfounded. This provision should be understood as only applying to written decisions and is not intended to preclude verbal decisions.

The Tribunal therefore considers that there was indeed a decision taken by the Ethics Adviser on 5 December 2016 to close the internal complaint.

* Registry's translation.

In these circumstances, it is appropriate to treat the complainant's protest and subsequent appeal against the email of 4 February 2020 as directed against this decision.

7. However, the Tribunal disagrees on this point with the opinion of the Appeals Board and considers that the conditions under which the decision of the Ethics Adviser was verbally notified to the complainant at the meeting of 5 December 2016 do not allow the applicable time limit for bringing an appeal to be considered binding on the complainant.

An examination of Mr Do.'s aforementioned testimony shows that it does not refer to the complainant's formal notification of Ms T.'s decision to close his internal complaint, but merely states that she had "explained"* to the complainant that the Anti-harassment Policy did not, in her view, apply to his internal complaint and that "the Ethics Office could not consider [that] complaint [...] receivable"*. However, the Tribunal considers that the communication of these explanations was ambiguous, in that it was liable to be understood not necessarily as the notification of a decision already taken by Mrs T., but simply as the announcement of a decision taken by her that would subsequently be formalised in writing, or even as information concerning the content of a recommendation that the Ethics Office would forward to the Director-General for her decision.

Furthermore, the Tribunal notes that, following the meeting of 5 December 2016, the complainant sent two emails to Ms T., on 19 December 2016 and 10 January 2017, which show that he misunderstood the exact meaning of the communication at issue, since in the first email he asked to be informed of the "official status of [his] complaint"* and in the second one he reiterated that request, pointing out that he had "still not received any news of the official, I specify official, status of [that] complaint"*. Admittedly, it is not wrong to consider, as the Appeals Board did, that these emails show that the complainant was well aware that he had been informed, at the meeting,

* Registry's translation.

of the outcome of his internal complaint. However, the emails also show, above all, that the complainant thought that the information provided to him was merely informal and that he clearly expected to be subsequently notified of an official decision – which he would certainly have expected to be a written decision. Yet the two emails remained unanswered.

8. It follows from these considerations that the time limit for lodging an appeal was unenforceable against the complainant on three counts.

9. Firstly, according to the Tribunal's settled case law, the burden of proving that an administrative decision has been notified lies with the organisation concerned (see, for example, Judgments 3871, consideration 9, 3034, consideration 13, or 2494, consideration 4). Moreover, it goes without saying that the notification is only proper if it allows the staff member concerned to have exact knowledge of the content of the decision in question. However, in view of the ambiguities identified above in the information provided to the complainant at the meeting of 5 December 2016, the Tribunal considers that, in the present case, no evidence has been formally presented that the Ethics Adviser's decision was properly notified, as any informal notification of that decision that may have taken place cannot be recognised as valid. Consequently, the one-month time limit set by paragraph 7(a) of the former Statutes of the Appeals Board for lodging a protest did not apply to this decision.

10. Secondly, it should be noted that, even if it were accepted that the decision had been properly notified, Ms T.'s failure to reply to the aforementioned emails of 19 December 2016 and 10 January 2017, and more specifically to the former, which had been sent to her within the prescribed one-month time limit, would render this time limit unenforceable. According to the Tribunal's case law, part of an organisation's duty of care towards its staff is to provide guidance to a staff member who is mistaken in the exercise of her or his right of appeal where it notices that such is the case and it would still be possible

for the staff member to act in good time (see, for example, Judgments 4369, consideration 4, 2713, consideration 3(d), and 2345, consideration 1(c)). Since it was apparent from the email of 19 December 2016, as stated above, that the complainant had not understood that a written decision would not be notified to him after the meeting, and given that the time limit for lodging an appeal against the decision of 5 December 2016 had not yet expired on the date of that email, the Ethics Adviser should have clarified the misunderstanding in order to enable the complainant to exercise his right of appeal. In any event, the failure to comply with this requirement means that the protest subsequently lodged cannot be considered time-barred.

11. Thirdly, it should be pointed out that, as will be discussed in consideration 16 below, it was the Director-General, and not the Ethics Adviser, who was competent to close an internal complaint of harassment. However, according to the Tribunal's case law, where it is not clearly apparent from the information given to a staff member that this information constitutes the communication of an administrative decision, "there are and may be circumstances that lead [the] staff member to reasonably conclude that it [is] not [a final decision]" and "[p]articularly is that so if [...] there is nothing to suggest that the matter in question has been considered by a person with authority to make a final decision thereon" (see, in particular, Judgments 3861, consideration 5, 3849, consideration 8, and 2644, consideration 8). The Tribunal considers that the present case falls under that case law insofar as the Ethics Adviser was not competent to close the complainant's internal complaint and could therefore reasonably doubt whether Ms T.'s explanations at the meeting of 5 December 2016 were intended to communicate a decision taken by her to that effect. In such a case, the time limit is not binding on the staff member concerned until the subsequent notification of a formal decision.

12. The complainant's internal appeal was therefore wrongly rejected as irreceivable on the ground that his initial protest was time-barred.

Moreover, the Organization's subsidiary argument that the appeal was in any case irreceivable for lack of a cause of action is of no avail. On the one hand, although it argues that the email of 4 February 2020 did not constitute an act adversely affecting the complainant, that argument is irrelevant since, as has been stated, the appeal in question must be treated as directed against the decision of 5 December 2016. On the other hand, the complainant plainly had a cause of action in challenging that decision because it closed his internal complaint.

13. It follows from the foregoing that the decision of the Director-General of 22 June 2022 must be set aside, without there being any need to rule on the other arguments raised against it.

At this stage of its findings, the Tribunal should ordinarily refer the case back to UNESCO for the Appeals Board to properly consider the complainant's internal appeal. However, given the length of time that has elapsed since the events and in accordance with the wishes of the complainant expressed in his complaint, the Tribunal will not do so in this case and will itself determine the lawfulness of the verbal decision of 5 December 2016.

14. It is apparent from the file, and in particular from the aforementioned written testimony of Mr Do., that the Ethics Adviser's decision to close the complainant's internal complaint was based on the consideration that it was irreceivable. In Ms T.'s view, that irreceivability arose from the fact that the complainant could not be regarded either as an alleged victim of or a direct witness to the harassment alleged in his internal complaint, since he himself had not been present at the incident of 20 October 2016 on which it rested.

15. The Tribunal considers that this ground for closing the internal complaint in question is tainted by an error of law.

It is apparent from paragraph 22 in conjunction with paragraph 27 of the previous Item 18.2 of the Human Resources Manual that the procedure for making an official internal complaint of harassment could be initiated by any UNESCO employee who considered that she or he

had been subjected to offensive behaviour. Paragraph 28 added that the procedure could also be triggered by "any person who ha[d] direct knowledge of the situation".

Admittedly, it could be considered that, since the complainant was not present at the incident of 20 October 2016, he was not entitled to initiate the procedure under paragraph 28 because he did not have "direct knowledge of the situation" within the meaning of that paragraph. In this case, however, the complainant initiated the procedure as a staff member who considered that he had been subjected to the behaviour criticised in his internal complaint, and not as a third party who was merely aware of that behaviour.

Yet there is nothing to prevent a staff member from submitting an internal complaint of moral harassment on account of incidents that affect her or him at which she or he was not personally present. Although unusual, it is not impossible for harassment to take the form of actions committed when the staff member concerned was not present. Such harassment could consist, for example, of the repetition of insulting or defamatory remarks about the staff member in the presence of one or more third parties, of which the staff member subsequently becomes aware and considers an affront to her or his dignity.

In the present case, that was exactly the context in which the complainant wished to place the submission of his internal complaint. He submits that he found Mr D.'s disputed remarks offensive, even though they were made in his absence, since they were directed at all security officers. He also correctly argues that paragraph 8 of Item 18.2 recognised the concept of harassment of a "group of employees".

While the circumstance that the staff member submitting an internal complaint of harassment was not personally present at the incident she or he wishes to report may of course be a factor in assessing the merits of that complaint, in that it may affect her or his personal perception of the incident in question, it is not a criterion for the receivability of the complaint.

Consequently, the Ethics Adviser erred in considering that she should close the complainant's internal complaint as irreceivable on that ground.

16. Moreover, the complainant is right to submit that the decision thus adopted was taken without authority.

Although paragraph 31 of aforementioned Item 18.2 provided that "[h]arassment complaints submitted to the Director-General shall be dealt with on his/her behalf by the Ethics Adviser", paragraph 36 thereof, dealing with the arrangements for closing complaints, provided as follows:

> "Should the facts as a result of the preliminary assessment indicate that no harassment has occurred, the Ethics Adviser will recommend to the Director-General that the case should be closed. The Ethics Adviser notifies the parties involved and [the Director of the Bureau of Human Resources Management] of the Director-General's decision and provides the reasons thereof."

It is evident from these provisions that it was the Director-General who had the authority to close an internal complaint of harassment, and not the Ethics Adviser, who only had the power to make recommendations in that area. Contrary to what the Organization appears to submit in its reply, this division of responsibility also applied to decisions to close internal complaints on the grounds of their irreceivability. Paragraph 54 of Item 18.2, concerning the "[r]oles and responsibilities" of the Ethics Adviser in applying the Anti-harassment Policy, confirms this assessment since, according to subparagraph (b) thereof, she was responsible for "[r]eviewing and undertaking a preliminary assessment of harassment complaints, and proposing the next course of action", which generally confirms that she herself did not have the authority to make decisions in this area.

The Ethics Adviser therefore exceeded her authority in deciding on her own initiative to close the complainant's internal complaint.

17. It follows from these considerations that the decision of 5 December 2016, as well as the implied decision to reject the protest against it, must be set aside, without there being any need to rule on the other pleas raised against them.

In such circumstances, it would ordinarily be appropriate to refer the case back to UNESCO for a preliminary assessment of the merits of the complainant's internal complaint. However, in view of the time that

has elapsed since the events and the fact that Mr D. has left the Organization in the meantime, as has the complainant – whose reinstatement has not been ordered, despite the setting aside of the termination of his appointment in Judgment 4924, also delivered in public this day on his eleventh complaint – the Tribunal considers that such a referral would be inappropriate in this case and will therefore opt instead for the alternative solution of awarding financial compensation for the moral injury caused by the contested decisions.

18. As the complainant was denied the right to have his internal complaint of harassment properly examined as a result of the Ethics Adviser's wrongful decision to close it as irreceivable, he suffered moral injury that should be redressed (see, for example, Judgments 4883, consideration 10, or 4471, consideration 22).

19. Moreover, the wrongful rejection of the complainant's internal appeal against the decision of 5 December 2016 as irreceivable by the Appeals Board breached his right to have that appeal duly examined, which also caused him moral injury warranting redress (see, for example, Judgments 4167, consideration 9, or 3936, considerations 7 and 10).

20. The complainant also claims an award of moral damages on account of the length of the preliminary assessment of his internal complaint of harassment and the internal appeal procedure, which he submits was excessive.

His arguments on this point are largely well founded.

21. In respect of the length of the preliminary assessment, the Organization observes that the decision to close the complainant's internal complaint was taken on 5 December 2016, in compliance with the indicative time limit of 45 days from the submission of the internal complaint set by paragraph 36 of aforementioned Item 18.2 for completing this assessment. However, insofar as the decision was not properly notified at that point, as also required by paragraph 36, and the complainant even had to wait until 4 February 2020 to receive clear

confirmation that his internal complaint had been closed, it must be concluded that this procedure was not conducted within the prescribed time limit, or even within a reasonable period.

22. As regards the length of the internal appeal procedure, it is settled case law that officials are entitled to have their appeals examined with the necessary speed, in particular having regard to the nature of the decision which they wish to challenge (see, for example, Judgments 4660, consideration 24, 4457, consideration 29, or 4063, consideration 14).

In the present case, approximately two years and three months elapsed between the submission of the complainant's notice of appeal on 28 March 2020, and the notification of the Director-General's decision of 22 June 2022 on his appeal. The Tribunal considers that this delay is undoubtedly excessive in view of the nature of the case, given that harassment-related appeals usually need to be dealt with especially quickly on account of the particular issues involved for the staff members concerned.

UNESCO rightly submits that the work of the Appeals Board was seriously disrupted in 2020 and 2021 by the successive lockdowns ordered by the French authorities because of the Covid-19 pandemic. However, the Tribunal considers that this ground alone is not sufficient, in the present case, to explain the length of the delay in the conduct of the procedure and that, contrary to what the Organization submits, this delay was such as to cause the complainant moral injury which it is appropriate to redress.

23. In all, the Tribunal considers that the various heads of moral injury recognised above, taken together, will be fairly redressed by awarding the complainant compensation in the amount of 15,000 euros.

In this respect, it should be noted that UNESCO raises a plea of irreceivability based on the fact that the amount of the claims for moral damages submitted by the complainant to the Tribunal, namely 50,000 euros, is higher than the amount claimed in this respect in his detailed appeal to the Appeals Board, namely 12,000 euros. The

Organization contends that these claims are therefore irreceivable for failure to exhaust internal remedies because they exceed the latter amount. However, the opinion of the Appeals Board of 2 May 2022 shows that the complainant increased the amount of his claim to 30,000 euros during the hearing before that body. Since the claims in question have already been increased to this amount in the internal proceedings, there is nothing, in any event, to prevent the Organization from being ordered to pay the aforementioned amount of 15,000 euros.

24. As the complainant succeeds, he is entitled to costs which – in view of the fact that he was not represented by counsel before the Tribunal – will be set at 1,000 euros.

DECISION

For the above reasons,

1. The decision of the Director-General of UNESCO of 22 June 2022, as well as the decision of the Ethics Adviser of 5 November 2016 and the implied decision to reject the protest against it, are set aside.
2. UNESCO shall pay the complainant moral damages in the amount of 15,000 euros.
3. The Organization shall pay the complainant 1,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 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 6 February 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER