

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**W. (No. 4)**  
**v.**  
**Eurocontrol**

**139th Session**

**Judgment No. 4962**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms A. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 7 June 2023 and corrected on 8 June 2023, Eurocontrol's reply of 18 September 2023, the complainant's rejoinder of 7 December 2023, Eurocontrol's surrejoinder of 7 March 2024, the complainant's further submissions of 25 July 2024 and Eurocontrol's final observations of 2 August 2024;

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 her performance appraisal for 2019 and the subsequent decisions to "freeze"\* her step advancement and to place her on a performance improvement plan.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, at its Headquarters in Brussels (Belgium) on 1 June 2003, at grade A7, renamed AD8 as from 1 July 2010. She was promoted to grade AD9 on 1 July 2011. On 1 July 2014 she was appointed Head of

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\* Registry's translation.

Agreements and Economic Affairs, at grade AD10, in the AD5-AD12 grade bracket. In July 2016 her post was renamed “Administrator” in the AD5-AD12 grade bracket, while she remained at grade AD10. Since 20 April 2018, the complainant has been assigned to the Directorate Central Route Charges Office, Finance and central IT (Directorate CFI), to the Finance and Procurement Unit (CFI/AFS/FPR) within the Finance Services (CFI/AFS). That unit was renamed the Procurement and Agreements Unit (CFI/AFS/PAR) from 4 July 2019. In her service, she led a team of eight to ten persons.

On 19 September 2019 the complainant’s supervisor, Mr St., completed her intermediate performance appraisal report, in which he drew her attention to several points for improvement in the areas of “organisational awareness” and invited her to better inform herself of social media practices in a professional setting. The complainant was criticised for two specific actions: firstly, she had approached the Director General directly to apply for a post that was still the subject of confidential internal discussions without informing her managers or the Directorate of Human Resources; and secondly, she had published a message on social media praising her service’s performance over the preceding five years, in particular in respect of gender diversity, without having previously informed the Ethics, Diversity and Inclusion Officer in the Human Resources and Services Unit, Mr J. The complainant refused to sign the report, stating that she totally disagreed with her supervisor’s reservations regarding her “organisational awareness”. On the contrary, she considered that this unfavourable report had resulted from the intention of her supervisor and the Directorate of Human Resources to damage her future professional career on account of the internal complaints she had lodged and the first complaint she had filed with the Tribunal.

On 21 October 2019 the complainant lodged with the former Director General a formal complaint of moral harassment against the Head of Human Resources and Services, Ms D., and two staff members who reported to her, Ms M. and Ms G., as well as against Mr St. She also indicated that Mr H., Director of Directorate CFI, should be heard at least as a witness but also as a possible co-perpetrator of harassment.

On 14 November 2019 the former Director General decided to open an investigation into these allegations of harassment in accordance with Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations governing officials of the Eurocontrol Agency. As a protective measure, he also decided to place the complainant temporarily under the supervision of a different staff member, Mr Ko., with immediate effect.

On 19 February 2020 the investigation report was sent to the Director General. It concluded, *inter alia*, that although the “perception of the established facts [varied] greatly from one person to another”<sup>\*</sup> and it was clear that the parties concerned and several witnesses were suffering from the situation, “[t]he investigation [had] found no evidence confirming harassment”<sup>\*</sup>. In the “Recommendations” section, the investigators recommended in particular “[t]o determine whether future cooperation between the parties concerned [could] be envisaged. If so, mediation could contribute to improved understanding in the future”<sup>\*</sup> and make it possible “[t]o clarify the role of the reporting line and [of Human Resources] with a view to a better understanding of the situation by the [complainant]”<sup>\*</sup>.

On 7 February 2020 Mr Ko. carried out the complainant’s performance appraisal for 2019, which was very positive and included the overall evaluation of “satisfactory”. The report was countersigned by Mr M., her second-level manager, on the same day, and by Mr Kr., a member of the Cabinet of the Director General, as the specific reporting manager for one of the four objectives set for the complainant, namely the creation of a centralised database. However, due to technical issues, particularly resulting from the change of supervisor just six weeks before the end of 2019, this report could not be registered in the Organisation’s IT system.

By an email of 27 February 2020, Mr J., Ethics, Diversion and Inclusion Officer in the Human Resources and Services Unit, who was also responsible for monitoring performance appraisal reports within the Agency, informed the complainant that, in view of Mr Ko.’s

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<sup>\*</sup> Registry’s translation.

temporary role in 2019, her performance appraisal for the entire year could not therefore be finalised by him acting alone, that the appraisal he had carried out on 7 February 2020 should be considered “null and void”, and that Mr St. therefore remained her line manager for the period concerned. He also noted that her then second-level supervisor, Mr H., was to remain the countersigning manager, instead of Mr M.

By a letter of 19 March 2020, the former Director General informed the complainant of the closure of her complaint of moral harassment, on the ground that the facts established during the investigation did not constitute evidence confirming the existence of harassment. An excerpt of the conclusions of the investigation report was enclosed with the letter. It was also indicated that the complainant and the persons against whom her complaint was directed would receive an invitation to enter mediation. On 31 March 2020 the Psychosocial Prevention Officer, Ms Do., asked the complainant to confirm within 15 days whether she would participate in the mediation process.

In response to the aforementioned decision of 19 March 2020, the complainant’s counsel wrote to the Director General on 3 April 2020, stating that his client had provided all the evidence necessary to establish the harassment of which she complained and to which she was still being subjected, in particular in respect of the cancellation of her performance appraisal for 2019. He criticised the reasons given for closing the complaint as “false and unlawful”<sup>\*</sup> and explained why the complainant refused to participate in the mediation process. He asked to be sent the complete investigation report as well as the “statements from the harassers and witnesses heard during the investigation”<sup>\*</sup>. He also asked the Director General whether Mr J. had the authority to decide to cancel the appraisal report completed by Mr Ko. in February 2020. Lastly, he criticised Mr J.’s actions leading to the cancellation of this appraisal report.

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<sup>\*</sup> Registry’s translation.

By a memorandum of 4 May 2020, the former Director General informed the complainant that, owing to her refusal to accept the mediation proposed by Ms Do., the protective measure taken for the duration of the investigation, that is the temporary change of line manager, was lifted. Thus, she would again report directly to her former supervisor, Mr St., who would be responsible for finalising the appraisal report for 2019 and also setting objectives to be achieved in 2020. He stated that Mr Ko. would be invited to participate in her performance appraisal as “other manager”, which would allow him to comment on her performance for the period between 14 November and 31 December 2019.

On 16 May 2020 the complainant lodged an internal complaint against: (a) the former Director General’s decision of 19 March 2020 rejecting her complaint of moral harassment; (b) Mr J.’s decision of 27 February 2020 cancelling the annual appraisal for 2019 carried out by Mr Ko.; and (c) the former Director General’s decision of 4 May 2020 to reappoint Mr St. as her line manager and staff member responsible for her annual appraisal for 2019. These decisions are the subject of Judgment 4961, also delivered in public this day.

On 27 May 2020 Mr St., in the presence of two observers, Mr D. and Mr Kr., held a meeting concerning the complainant’s performance appraisal for 2019, during which he informed her of his intention to propose an overall evaluation of “not satisfactory”. According to the complainant, Mr Kr. drew up minutes of this meeting. Although it seems to have been agreed, in response to a suggestion by Mr D., to take time to think and to arrange another meeting for the following week, in the end such a meeting did not take place. The complainant submits that Mr St. refused to hold that second meeting by an email of 28 May 2020.

On 29 June 2020 Mr St. signed the complainant’s performance appraisal report for 2019, in which he maintained his overall evaluation of “not satisfactory” and pointed out several shortcomings in her management skills and her failure to meet one of the four objectives set for her. The report reproduced the various components of the appraisal carried out by Mr Ko. in February 2020 and the positive evaluation

given by Mr Kr. as the specific reporting manager for one of the complainant's four objectives, namely the creation of a centralised database. On 2 July 2020 Mr H., Director of Directorate CFI, countersigned the report. However, no mention was made of the "satisfactory" overall evaluation that Mr Ko. had awarded in February 2020. The complainant expressed her disagreement with the report and asked to be protected while it was finalised. She also requested that the matter be referred to the Reports Committee.

In response to her request for protection, the former Director General decided, by a letter of 12 June 2020, to appoint Mr Si. as her new line manager for a temporary period of six weeks starting on 15 June 2020. On 18 June the complainant's counsel complained about the new decision, which he described as institutional harassment.

The Reports Committee heard the complainant on 11 August 2020, then delivered its opinion on 30 September. Despite the dissenting observations of the members of the Committee, the report concluded that the overall evaluation should be maintained as "not satisfactory", mainly due to problems relating to the complainant's conduct in her service. However, the Committee also expressed concern about the state of the working relationship between the complainant and her managers, noting that she was again to be placed under another temporary supervisor, Mr Si., and emphasising her possible transfer within the Organisation as an alternative to the establishment of a performance improvement plan.

By a letter of 9 October 2020, the former Director General informed the complainant that he had decided to maintain the overall evaluation of her performance as "not satisfactory" in her appraisal report for 2019, that a six-month performance improvement plan was to be put in place, and that her step advancement was temporarily suspended until her performance evaluation reached the level of "satisfactory".

On 4 January 2021 the complainant lodged an internal complaint against this decision, which she requested be set aside. On 13 September 2021 she wrote to the Chairman and the members of the Joint Committee for Disputes, as well as to the Chairman of the Staff

Committee, to enquire about the progress of her internal complaint, stating that she was still being subjected to harassment by the Agency and requesting to be heard by the Joint Committee for Disputes.

On 10 December 2021 the Head of Human Resources and Services informed the complainant that her internal complaint had been forwarded to the Joint Committee for Disputes to be discussed at a future session, but that there might be a “moderate delay”<sup>\*</sup> in dealing with it owing to the Covid-19 pandemic, unexpected staffing difficulties and the suspension of all recruitment activities at the Agency.

The Joint Committee for Disputes issued its opinion on 25 May 2022 and concluded that the internal complaint was well-founded for the following reasons: (1) as the findings of the Reports Committee were not unanimous, the Director General should have provided reasons for his decision to endorse the opinion of some members of that committee over others; (2) although the Reports Committee favoured the complainant’s transfer rather than the introduction of a performance improvement plan, the Director General did not give reasons for rejecting the option of a transfer; (3) the Director General’s decision to maintain the complainant’s overall performance evaluation as “not satisfactory” was too severe when only one of the four objectives set had not been achieved; (4) Mr J. did not have the authority to cancel the performance appraisal report drawn up by Mr Ko. on 7 February 2020; (5) Mr St. had not complied with the agreement reached at the meeting of 27 May 2020; and (6) the prescribed time limit for the Reports Committee to communicate its conclusions to the complainant had not been observed. The report was not ultimately notified to the complainant until the reply was filed in the present proceedings, on 18 September 2023.

On 14 November 2022 the complainant asked the Director General to take a final decision on her internal complaint of 4 January 2021. He replied on 15 December 2022 that the opinion of the Joint Committee for Disputes had been delivered on 25 May 2022, that a final decision

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<sup>\*</sup> Registry’s translation.

was being finalised and that it would be communicated to her “as soon as possible”\*, at the same time as the opinion in question.

As she received no further communication, the complainant filed the present complaint on 7 June 2023 against what she regards as an implied decision to reject her internal complaint.

On 11 July 2024, that is after the end of the written procedure before the Tribunal, the new Director General delivered a final decision rejecting the internal complaint of 4 January 2021 and confirming his predecessor’s decision of 9 October 2020 in its entirety. At the request of the President of the Tribunal, Eurocontrol provided a copy of that decision and the parties had the opportunity to comment on it in further submissions.

In her complaint, the complainant asks the Tribunal to set aside the decision of 9 October 2020, as well as her performance appraisal report for 2019, and to order the removal of that report from her personal file. She also claims various types of compensation – including 20,000 euros for the “freezing”\* of her step advancement and the loss of the opportunity to be promoted, 100,000 euros for the moral injury she alleges to have suffered, and 25,000 euros in exemplary and punitive damages – and an award of costs in the amount of 5,000 euros for the expenses incurred in the internal appeal procedure and 7,000 euros for the present proceedings.

In her further submissions of 25 July 2024, the complainant also requests that the scope of her complaint be extended to the setting aside of the decision of the new Director General of 11 July 2024 and that the amount of costs due in connection with the present proceedings be increased to 9,500 euros.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded and, accordingly, to reject all the complainant’s claims.

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\* Registry’s translation.

## CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of the former Director General of 9 October 2020 and his successor's decision of 11 July 2024 to maintain her unfavourable performance appraisal report for 2019.

2. The Organisation requests the joinder of the complainant's third, fourth, fifth and sixth complaints, or at least of the third and fourth complaints.

The Tribunal recalls its case law according to which the decisive criterion for joining complaints is generally that they raise the same or similar questions of law or fact, and it is not sufficient that they stem from the same continuum of events (see Judgment 4753, consideration 6).

In this case, given that the four complaints seek to challenge several distinct decisions, that they were dealt with in different internal procedures which resulted or should have resulted in separate opinions of the Joint Committee for Disputes and that, although the allegations of harassment appear in all the cases, each complaint raises specific questions and pleas, the Tribunal considers that it is appropriate to deal with the various cases separately and deliver separate judgments on each of them.

Accordingly, the complaints will not be joined.

3. Although the Organisation does not raise any objections to the receivability of the complaint in its entirety, the Tribunal considers it useful to clarify that the complaint must be considered as receivable for the same reasons as those set out in Judgments 4820, consideration 6, and 4819, consideration 3, delivered in public on 8 July 2024.

The Tribunal observes that a final decision on the internal complaint of 4 January 2021 was taken by the new Director General on 11 July 2024. That decision was produced after Eurocontrol had filed its surrejoinder, following which the parties had the opportunity to comment on it in further submissions. Thus, in accordance with the Tribunal's case law, it is appropriate to treat the present complaint,

initially directed against an implied decision, as directed against the new Director General's decision of 11 July 2024, as the complainant requests in her further submissions of 25 July 2024 (see in particular, for similar cases, Judgments 4820, consideration 6, 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

4. In her first plea, the complainant considers that the manner in which her performance was appraised for 2019 was unlawful on two counts. Firstly, the decision of Mr J., the Ethics, Diversity and Inclusion Officer in the Human Resources and Services Unit, to cancel, by an email of 27 February 2020, the appraisal report drawn up by her temporary supervisor Mr Ko. on 7 February 2020 was unlawful because Mr J. did not have the authority to take such a decision. Secondly, the former Director General's decision of 4 May 2020 to reinstate her former supervisor, Mr St., with immediate effect as the staff member responsible for appraising her performance for 2019, although he had been expressly named in the complaint of moral harassment she had lodged on 21 October 2019, was also unlawful. In so deciding, the Director General relied on the complainant's refusal to accept the Psychosocial Prevention Officer's invitation to participate in a mediation process with the persons against whom her complaint of harassment was directed. According to the complainant, that mediation process was unlawful because it was decided in breach of the provisions of paragraph 5.1 of Article 5 of Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations, and Mr St.'s reinstatement was decided solely as a measure of retaliation against her.

However, the Tribunal observes that the setting aside of both Mr J.'s email of 27 February 2020 and the former Director General's decision of 4 May 2020, insofar as it concerned Mr St.'s reinstatement, were expressly requested by the complainant in her third complaint, which was also directed against the rejection of her complaint of moral harassment of 21 October 2019 and was dealt with in Judgment 4961, also delivered in public this day, in which those requests were dismissed. The Tribunal considered in that respect that it is usually

acceptable for the normal reporting line to be re-established where a complaint of harassment lodged by a staff member against one of her or his managers has been dismissed, as it was here, in order to ensure the continued smooth functioning of an international organisation.

For the same reasons as the ones set out in that judgment, the arguments calling into question the lawfulness of those two decisions in the present complaint must be rejected.

5. In her second plea, the complainant alleges that Mr St. lacked impartiality during her performance appraisal for 2019, since he had decided that the appraisal would be negative in any event. She submits that Mr St. based his unfavourable report primarily on unverifiable rumours or unproven facts. Similarly, he gave the impression that he was following his managers' instructions to this effect and attempted to fabricate negative opinions through his assistant, who was allegedly tasked with contacting members of the complainant's team to gather evidence against her.

6. The Tribunal recalls that, according to its settled case law, bias may not be presumed, and that any allegation of bias must be supported by tangible evidence (see, for example, Judgments 4891, consideration 12, 4713, consideration 12, 4543, consideration 8, 4451, consideration 16, 4408, consideration 22, and 3380, consideration 9).

In this case, it is apparent from the written submissions that Mr St., as the complainant's supervisor from 1 January to 13 November 2019, explained why he considered – despite the opinions to the contrary expressed by Mr Ko., as her temporary supervisor from 14 November to 31 December 2019, and by Mr Kr., as her specific supervisor for one of the complainant's four objectives set for 2019 – that her performance appraisal for 2019 should culminate in an overall evaluation of “not satisfactory”. He made particular reference to problems relating to the complainant's conduct in her service in terms of awareness of organisational culture and rules, both written and unwritten, applicable within Eurocontrol. Moreover, it does not appear that this opinion was based solely on unverifiable rumours or unproven facts. The file shows

that, when making this decision, Mr St. relied on established facts, referred to in the intermediate appraisal report of September 2019 or mentioned during interviews conducted by him or the Head of Human Resources and Services during the course of 2019. The Tribunal also notes that the favourable opinions of Mr Ko. and Mr Kr. were indeed included by Mr St. in the final appraisal report that he signed on 29 June 2020. It is true that Mr St. did not expressly state in the report that Mr Ko. had given an overall evaluation of “satisfactory”, but this was self-evident from the totality of Mr Ko.’s previous comments that were reproduced in the various sections of the report. Similarly, the mere fact that Mr St. did not find fault with the complainant for the way she led her team in the intermediate appraisal report of September 2019 did not in itself prevent that criticism, with supporting reasons, from being made in the appraisal report that he signed on 29 June 2020. Lastly, the complainant has tangibly failed to provide evidence for her allegations that Mr St. merely followed instructions given to him by, in particular, the Directorate of Human Resources, and also attempted, through his assistant, to gather testimony unfavourable to the complainant.

The second plea is therefore rejected.

7. In her third plea, the complainant considers that insufficient reasons were given for the change in her final overall evaluation of “satisfactory”, in the report drawn up by Mr Ko. on 7 February 2020, to “not satisfactory”, in the report subsequently drawn up by Mr St.

However, the Tribunal recalls in this connection its settled case law according to which assessment of an employee’s merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Although the Tribunal must ascertain whether the ratings given to the employee have been determined in full conformity with the rules, it cannot substitute its own opinion for the assessment made by the people and/or bodies responsible for appraising the staff members of an international organisation. The Tribunal will therefore intervene only if such a report was drawn up without authority or in breach of a rule of form or

procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority (see, for example, Judgments 4564, considerations 3 and 8, 4258, consideration 2, 3692, consideration 8, 3268, consideration 9, 3228, consideration 3, 3062, consideration 3, and 1688, consideration 5).

In this case, the Tribunal considers that the appraisal report signed by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020 gave sufficient reasons for the change in the overall evaluation of the complainant's performance from "satisfactory" in February 2020 to "not satisfactory" in June 2020. It is quite another matter that the complainant disagrees with these reasons, given that the Tribunal will not substitute its own assessment for that undertaken by the bodies competent to do so, including the Reports Committee.

The third plea is therefore also rejected.

8. In her fourth plea, the complainant considers that the appraisal report signed by Mr St. on 29 June 2020 is in any event unlawful on three counts. Firstly, only one appraisal could be conducted per year, so the only valid appraisal was the one conducted by Mr Ko. in February 2020, which no one could cancel under any circumstances. In her view, it follows that Mr St. could no longer conduct an appraisal in May 2020 nor, *a fortiori*, draw up an unfavourable appraisal report at the end of June 2020. That second report should therefore be set aside, as should the decisions confirming it. Secondly, that report should in any event be set aside because it was drawn up after the time limits prescribed by Article 3 of Rule of Application No. 3 concerning the drawing up of the appraisal report provided for in Article 43 of the Staff Regulations. Thirdly and lastly, Mr St. did not comply with the agreement reached at the meeting on 27 May 2020 that a further appraisal interview should be scheduled for the following week.

9. According to the second sentence of the first paragraph of Article 3 of aforementioned Rule of Application No. 3, an annual appraisal report must be drawn up "not later than three months after

expiry of the reference period”. The Tribunal recalls that, according to its settled case law in this connection, annual appraisal reports continue to be useful even if deadlines have not been respected, with the consequence that failure to meet a deadline cannot on its own be a reason for setting aside reports but, depending on the case, the effect that the delay has on the report’s content will be taken into account (see, for example, Judgments 3039, consideration 9, and 2064, consideration 5). In this case, it considers that the delay in the finalisation of the performance appraisal report for 2019 is excusable in view of the circumstances of the case, in particular the need to await the outcome of the complaint of harassment lodged by the complainant on 21 October 2019, the submission of which had accounted for Mr St.’s temporary removal for part of 2019.

10. Moreover, although it is true that the first sentence of the same paragraph also provides that “[o]nly one report shall be drawn up [...] in respect of any one reference period”, which must cover “all of the tasks and responsibilities performed in the course of that period”, the Tribunal considers that this provision was not contravened in this case. As stated in aforementioned Judgment 4961, it complied with the applicable rules and was completely logical that, in the circumstances of the case, it should be the line manager who had supervised the complainant for the longest time in 2019 who was charged with finalising her performance appraisal report for 2019, given that the report already drawn up by Mr Ko. in February 2020 was not simply cancelled but included in the report of 29 June 2020.

11. In the light of the foregoing, the fourth plea must also be rejected.

12. In her fifth plea, the complainant contends that the Reports Committee, appointed to give its opinion on the unfavourable appraisal report drawn up by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020, failed in its duty by demonstrating a lack of independence and impartiality. She alleges that:

- a member of the Committee, Mr N., who reported directly to the Director of Directorate CFI, Mr H., had a conflict of interest, as did several persons who were heard by the Committee despite the fact that they had been expressly named in the complaint of harassment filed by the complainant on 21 October 2019;
- the members of the Committee refused to take into account the documents forwarded by the complainant before her hearing;
- during the videoconference with the members of the Committee, only the complainant was visible on the screen, while they had not turned on their cameras;
- during that meeting, the members of the Committee continually questioned each of the complainant’s statements, thereby demonstrating a clear bias against her;
- the members of the Committee refused to hear Mr Kr., the second supervisor who had signed the favourable appraisal report of February 2020, although his testimony would have been indisputably in the complainant’s favour, and Mr St. and Mr H. confined themselves, during their hearing, to groundless accusations that were irrelevant to the appraisal; and
- on their own initiative, they heard Mr J. as the staff member responsible for monitoring performance appraisal reports within the Agency, although he had been identified in the complaint of moral harassment filed by the complainant on 21 October 2019. There was thus also a conflict of interest on that point.

13. Recalling its case law referred to in consideration 7 above, the Tribunal notes firstly that the fact that the members of the Reports Committee sometimes expressed dissenting considerations in their discussions tends to support the conclusion, contrary to what the complainant asserts, that they performed their duties independently and impartially.

Despite what the complainant also contends in this regard, it appears that, although Mr Kr., who had countersigned the appraisal report drawn up in February 2020, could not be heard by the Committee

at its meeting of 11 August 2020, he nevertheless submitted a written testimony which the members of the Committee were able to consult. In any event, the Tribunal fails to see how a hearing of Mr Kr. could have made a tangible difference. In 2019 he was the complainant's supervisor for just one of the four objectives set for her, namely the creation of a centralised database, and Mr St.'s appraisal was consistent with Mr Kr.'s regarding the manner in which she had achieved that objective.

The allegation concerning the conflict of interest of one of the members of the Committee in respect of Mr H. must also be rejected because it is not based on any solid and duly verifiable evidence. In accordance with the Tribunal's settled case law on this point, an allegation of conflict of interest has to be substantiated and based on specific facts, not on mere suspicions or hypotheses, and the complainant bears the burden of proof of conflict of interest (see, for example, Judgments 4891, consideration 11, 4617, consideration 9, and 4616, consideration 6).

As regards the particular conflict of interest allegedly also faced by several persons who were heard by the Committee although they had been expressly identified in the complainant's complaint of harassment of 21 October 2019, it should be noted that this complaint was rejected by the former Director General on 19 March 2020. In any event, it was appropriate for these individuals to be heard by the Committee since they had played a key role in the complainant's performance appraisal. There was therefore nothing to prevent them from being heard by the Committee.

Similarly, the complainant does not establish how the fact that she was the only one to switch on her camera during the Committee's videoconference of 11 August 2020 adversely affected her in practice.

As regards the alleged refusal of the members of the Committee to consider the documents submitted by the complainant shortly before the start of the meeting of 11 August 2020, it should be noted that the minutes of the meeting show that the members did not expressly refuse to take into consideration the documents produced by the complainant but merely regretted their late submission, which had prevented them

from using them to prepare for the meeting. However, it cannot be concluded that the members of the Committee did not consult these documents before giving their opinion. Furthermore, since the complainant has failed to produce these documents before the Tribunal, the Tribunal is in any event unable to assess to what extent the fact that they were allegedly ignored by the members of the Committee could have adversely affected her in practice.

Similarly, the complainant's allegation that the members of the Committee constantly demonstrated bad faith at this meeting by systematically questioning each of her statements must be proven by the complainant if it is to be accepted (see, to that effect, Judgments 4849, consideration 9, and 4753, consideration 13). However, it is not in this case, and there is nothing in the Committee's opinion to support a finding of bad faith.

Finally, the complainant's assertion that the members of the Committee were biased against her throughout the hearing may be based on her perception, but it is not based on any specific fact and, in any event, does not appear to be borne out by a careful reading of the Committee's opinion of 30 September 2020.

It follows from the foregoing that the fifth plea must be rejected.

14. In her sixth plea, the complainant considers that the conclusion reached by the Reports Committee is inconsistent and inappropriate because, although its members expressed divided opinions, the Committee nevertheless concluded that her overall performance evaluation for 2019 of "not satisfactory" should be maintained, while at the same time proposing the complainant's transfer as an alternative to the establishment of a performance improvement plan.

The Tribunal observes on this point that the Committee:

- unanimously considered that the appraisal conducted by Mr St. and Mr H. in the "Corporate Behaviours" section of the appraisal report of 29 June 2020 should remain unchanged;

- was divided as to Mr St. and Mr H.’s appraisal in respect of the “People Management” objective: three members considered that the appraisal should remain as “not satisfactory”, while one member considered that it should be changed to “satisfactory” while mentioning, firstly, that further efforts were required in this area and, secondly, that the overall evaluation should be changed to “satisfactory”, and another member suggested that the overall evaluation should be changed to “satisfactory” while adding that the conduct and objective in question needed improvement;
- ultimately acknowledged that problems relating to the complainant’s conduct in her service led it to conclude that the complainant’s overall performance evaluation should be considered “not satisfactory”.

The Tribunal concludes that, although the opinions of the members of the Reports Committee may have diverged during the discussions, their final recommendation was nonetheless unanimous.

Lastly, the Tribunal considers that the Director General could, within his broad discretionary authority in the area, consider that the establishment of a performance improvement plan intended to allow the complainant to rectify her conduct in the Organisation was more appropriate than her straightforward transfer.

It follows that the sixth plea is unfounded.

15. In her seventh plea, the complainant calls into question the lawfulness of the decision taken by the former Director General on 9 October 2020 to maintain the unfavourable appraisal report drawn up on 29 June 2020: firstly, because the Director General was listed in the complaint of harassment of 21 October 2019 as a witness and, as the case might be, a possible co-perpetrator of one or more acts of harassment; secondly, because that decision was based on an opinion of the Reports Committee that was itself unlawful; thirdly, because the reinstatement of Mr St. as the complainant’s line manager was an act of retaliation; and fourthly, because the Director General was again guilty of harassment after the complaint of harassment of 21 October 2019 and no action was taken by the Agency to stop that harassment, as well

as the harassment committed by the complainant's other managers after the complaint had been closed.

16. While referring to its settled case law in this connection, recalled in consideration 7 above, the Tribunal notes firstly that the complaint of moral harassment was rejected by the former Director General's decision of 19 March 2020 and that he was not expressly identified in that complaint as a harasser. Next, the various objections against the report issued by the Reports Committee have been declared unfounded in consideration 14 above. Furthermore, the claims set out in the complainant's third complaint against the Director General's decision of 4 May 2020 to reinstate Mr St. as her supervisor for 2019 were rejected in aforementioned Judgment 4961. Lastly, as there was no decision recognising the Director General as guilty of harassment, the complainant's allegation that he could not lawfully make a decision on her appraisal report must be rejected.

It follows that the objections to the Director General's decision of 9 October 2020 to maintain the unfavourable appraisal report drawn up on 29 June 2020 must be declared unfounded.

17. In her eighth plea, the complainant, who questions whether her internal complaint was duly forwarded to the Joint Committee for Disputes, considers that the conditions under which the case was referred to the Committee and the time it took to deliver its opinion demonstrate that it was manipulated in the handling of her internal complaint and therefore did not perform its task independently.

However, the written submissions show that the Joint Committee for Disputes examined the complainant's internal complaint on 25 March 2022 and delivered its opinion on 25 May 2022. In this case, although the time limit for delivering its opinion was clearly exceeded by far, the Tribunal does not see anything in the file that would allow it to conclude that the Committee, for this reason alone, lacked independence or was manipulated in its functioning. This is especially so since the complainant has not produced sufficient evidence to prove

her allegation and the members of the Committee unanimously found that her internal complaint was well-founded.

This plea should therefore also be rejected.

18. In her ninth plea, the complainant considers that the Director General's decision of 9 October 2020 should be set aside since it was not taken within the four-month time limit specified by Article 92(2) of the Staff Regulations.

However, the Tribunal notes that Article 92(2) of the Staff Regulations provides that if no express decision has been issued on an internal complaint within four months, this lack of reply is to be deemed to constitute an implied decision rejecting it, against which a complaint may be filed with the Tribunal. The existence of an implied decision does not, of course, preclude the adoption of a later express decision that, where appropriate, replaces it.

The ninth plea will therefore be rejected.

19. In her tenth plea, the complainant submits that the very long delay in deciding on her internal complaint constitutes an abuse of process and should lead to the setting aside of the decision of 9 October 2020 confirming the unfavourable appraisal report for 2019 based on the opinion of the Reports Committee.

However, as there is no provision stating that the decision taken is unlawful if it is not taken within a certain period of time, the delay in the adoption of the decision of 9 October 2020 has no effect on its lawfulness. Accordingly, the tenth plea is rejected.

20. In her eleventh plea, the complainant considers that the reasons stated for the Director General's decision of 11 July 2024 are inadequate in that, firstly, he relied only on evidence against her and other "misrepresented"\* evidence, secondly, he did not respond to the contrary reasoning of the Joint Committee for Disputes, which issued a unanimous opinion, and, thirdly, he could not in any event remedy the

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\* Registry's translation.

unlawfulness of the appraisal report drawn up by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020.

21. The Tribunal firstly recalls its settled case law according to which the executive head of an organisation may reject the recommendations of an internal appeal body as long as reasons are given in her or his decision (see, for example, Judgment 4616, consideration 9, and the judgments cited therein).

Moreover, the Tribunal has considered in considerations 4 to 12 above that the various objections to the performance appraisal report drawn up by Mr St. on 29 June 2020 were unfounded. It follows that the new Director General could lawfully refer to that report in his decision of 11 July 2024. Moreover, he complied with the opinion of the Reports Committee.

Contrary to what the complainant next considers, it appears that the Director General sufficiently explained the reasons why he did not endorse the opinion of the Joint Committee for Disputes. He did so:

- by explaining all the reasons why he considered it appropriate to follow the recommendation set out in the opinion of the Reports Committee;
- by explaining that the proposal put forward by the Joint Committee for Disputes of considering the complainant’s transfer was out of date as such a transfer had been decided on 30 July 2021;
- by explaining that the contested appraisal report and the opinion of the Reports Committee had noted shortcomings in the complainant’s conduct, while the Joint Committee for Disputes had ignored that fundamental point in the report and focused on the sole fact that one of the objectives set for the complainant for 2019 had not been achieved, which did not justify the overall evaluation of “not satisfactory”; and
- by recalling the reasons why it was for Mr St. to finalise the appraisal report for 2019, given that Mr Ko. had also been consulted as “other manager” for part of that year.

Lastly, the Tribunal notes that the Joint Committee for Disputes was wrong to consider that a performance appraisal report could not take account of the appraisee's "behaviour", since the "conduct", consisting of an "evaluation of behavioural competences required to perform his function" is one of the components expressly prescribed in a performance appraisal, by both the first paragraph of Article 43 of the Staff Regulations and Article 5 of Rule of Application No. 3. The Committee was also somewhat inconsistent on this point because, while considering the internal complaint well-founded, it expressed the reservation that the complainant "might review her behaviour"

Accordingly, the eleventh plea is also unfounded.

22. In her twelfth plea, the complainant submits that the time taken to decide on her internal complaint was unacceptable and caused her substantial moral injury.

The Tribunal recalls that a failure by appeal bodies to examine appeals within a reasonable time breaches the requirement that internal appeals be dealt with expeditiously. The amount of compensation that may be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, and 4100, consideration 7).

The Tribunal notes that three years and six months elapsed between the lodging of the internal complaint, on 4 January 2021, and the notification of the final decision taken by the new Director General, on 11 July 2024. That delay is unacceptable and, given the nature of the case, caused moral injury to the complainant, which will be fairly redressed by ordering the Organisation to pay her compensation of 5,000 euros.

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\* Registry's translation.

23. The complainant asks for an order that the appraisal report drawn up by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020 be removed from her personal file.

However, it is not necessary to grant this request for removal, since it has been shown in considerations 4 to 12 above that this report was not unlawful.

24. The complainant also asks that she be awarded the sum of 20,000 euros for the injury caused to her by the “freezing”<sup>\*</sup> of her step and the loss of the opportunity to be promoted.

As the request for the complainant’s performance appraisal report for 2019 to be set aside has been rejected, it is unnecessary to grant this claim.

25. The complainant considers that the bad faith and malice demonstrated towards her warrant an award of 25,000 euros in punitive damages.

However, the Tribunal has consistently held in its case law that an order for an organisation to pay punitive damages can only be justified under exceptional circumstances (see, for example, Judgments 4819, consideration 22, 4640, consideration 15, 4493, consideration 11, and 4484, consideration 9). Despite the Organisation’s cavalier attitude and regrettable disregard for its obligation to deal with the complainant’s internal complaint in an appropriate and diligent manner, the Tribunal considers that such circumstances are not evident in this case. There is therefore no reason to grant this claim.

26. The complainant submits that she was forced to incur costs to defend her interests in the internal appeal procedure, that it would be unfair to leave her to bear in the circumstances of the case. She therefore seeks an award of costs in the amount of 5,000 euros for the internal appeal.

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<sup>\*</sup> Registry’s translation.

However, according to the Tribunal's case law, costs for the internal appeal proceedings within international organisations may only be awarded under exceptional circumstances, unless there is an express provision to the contrary (see, for example, Judgments 4819, consideration 23, and 4217, consideration 12). Such exceptional circumstances have not been established in the present case.

27. As the complainant succeeds in part, she is entitled to the sum of 5,000 euros in costs for the proceedings before the Tribunal.

#### DECISION

For the above reasons,

1. Eurocontrol shall pay the complainant moral damages in the amount of 5,000 euros.
2. The Organisation shall also pay her 5,000 euros in costs for the proceedings before the Tribunal.
3. All other claims are dismissed.

In witness of this judgment, adopted on 11 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