

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Corrigendum*

**Z.**  
**v.**  
**WHO**

**139th Session**

**Judgment No. 5000**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. Z. against the World Health Organization (WHO) on 17 March 2023 and corrected on 20 April 2023 and 29 May 2023, WHO's reply of 15 August 2023, the complainant's rejoinder of 24 November 2023, corrected on 1 December 2023, WHO's surrejoinder of 29 February 2024, corrected on 4 March 2024, the complainant's additional submissions of 15 April 2024 and WHO's final comments of 24 June 2024;

Considering the information provided at the Tribunal's request by WHO on 16 July 2024 and by the complainant on 18 July 2024;

Considering the *amicus curiae* brief submitted by the Whistleblowing International Network, Government Accountability Project, Transparency International, Transparency International Italy, Globaleaks and Whistleblower Aid on 22 September 2023, the complainant's comments of 24 November 2023 and WHO's comments of 21 December 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 (1) the “deemed rejection” of his request for an investigation into the alleged misconduct of Mr G., who at the relevant time held the position of Assistant Director-General (ADG) at the WHO Headquarters in Geneva, Switzerland, and separated from the Organization on 30 June 2021; (2) the determination by the Office of Compliance, Risk Management and Ethics (CRE) that he had not suffered retaliation, and that he was not entitled to protection against retaliation and (3) WHO’s decision to accept his resignation which he claims constitutes constructive dismissal.

The complainant had joined WHO in 2008 and was working as Coordinator, Healthy Setting Program in Venice, Italy, at grade P-5. On 3 March 2020, he was appointed as Field Coordinator in the WHO Health Emergency, European Regional Office (WHE/EURO), in Italy. In that capacity, the complainant and a group of consultants co-authored a report on Italy’s initial response to the COVID-19 pandemic (the “COVID report” or “the report”). At the material time, the complainant was holding a continuing appointment.

On the morning of 11 May 2020, the complainant shared a copy of the draft COVID report with the ADG, Mr G., who had previously worked with the Italian Ministry of Health. Thereafter, on the same day, the complainant informed his team that changes needed to be made to the COVID report.

Later that day, the complainant wrote to his supervisor that he was on sick leave and that he would “only monitor the publication [of the COVID report] until [it was] launched and published”. In a separate email to CRE, the complainant indicated that his sick leave was due to “burn out” because of a “threat[ening] email [he had] received [from Mr G.] to cover one issue on which [Mr G.] [would] be attacked”.

On 13 May, the COVID report was published. Within 24 hours of its publication, it was removed from the WHO website, at the request of China (as a WHO Member State). The Italian media became interested in the circumstances surrounding the withdrawal of the COVID report, in the context of the public’s growing interest in the Italian Government’s response to the pandemic.

In June 2020, the complainant filed a claim for service-incurred illness with the Advisory Committee on Compensation Claims (ACCC).

On 9 October 2020, the complainant wrote again to CRE, specifying that “I am writing to Ethics [...] so that there is [a] track of this”. He also indicated in his email to CRE that on 11 May 2020, Mr G. informed him that the COVID report should not be published as it inaccurately stated that the Italian pandemic plan was not updated whilst it had been updated in 2016, when Mr G. was a Director in the Italian Ministry of Health. The complainant further reported that during a phone call Mr G. had threatened to go to the Director-General and have him fired if he did not modify the COVID report.

On 21 October, the complainant sent a further email to CRE, referring to the WHO Whistleblowing and Protection Against Retaliation Policy and Procedures (the “Whistleblowing Policy” or “the Policy”), in which he stated that he considered himself as a whistleblower and that “[a]s [he] was subject to retaliation – dismissal threats [...] [he] was] sending this email to protect [him]self as whistle blower for any action [that] might be taken in further retaliation against [him]”.

On 29 October and 4 November 2020, the complainant had discussions with CRE.

On 4 November, CRE sent an email to the complainant in which it noted “that [Mr G.]’s comments and apparent ‘dismissal threats’ were made in the context of the publication of the [COVID] report and before [the complainant] reported [his] concerns regarding the withdrawal of this report [...] to the [...] CRE”. CRE also observed that the complainant was not under Mr G.’s supervision, and concluded that “[Mr G.]’s alleged comments, while inappropriate, do not constitute retaliation, [pursuant to the definition set forth] in the [Whistleblowing] Policy, section 2.1.2, clause 12” and that “there ha[d] been no retaliation against [the complainant] at this stage (and therefore no need for protection)”. CRE nevertheless indicated in its email that it would keep monitoring the situation. It further added that “in respect of [Mr G.] and his allegedly inappropriate comments, including inappropriate language in an email addressed to [the complainant] on 11 May 2020, [CRE would] be in touch to discuss internal mechanisms to address this

matter”. CRE further indicated that a possible temporary reassignment to Bulgaria had been discussed with the complainant.

In the meantime, on 28 October 2020, the complainant had informed WHO that the consultants who were involved in the drafting of the COVID report and himself had been summoned by the Public Prosecutor of Bergamo, Italy. On 3 November 2020, WHO issued communications to the Public Prosecutor and the Italian Ministry of Foreign Affairs, pointing out the immunities of WHO and its personnel.

On 5 November, the complainant wrote to the Office of Internal Oversight Services (IOS) that “you might have heard about complaints that I have raised since May in relation to utmost severe wrongdoings by [Mr G.] (dismissal threats, pressure to modify text of a publication [...] related to the pandemic plan, which he was responsible for prior to his assignment to WHO)”. On 9 November, IOS responded the following: “Thank you for this. We will get back to you if we need further information.”

On 12 November, the complainant’s counsel asked CRE to grant the complainant whistleblower protection. In his letter, the complainant’s counsel indicated that the complainant “ha[d] been repeatedly approached by the Italian press and ha[d] been contacted by Italian judicial authorities, who are conducting press investigations and judicial enquiries” and “[t]he only solution proposed to [the complainant] [by the Organization] was his transfer to Bulgaria”.

On 4 December 2020, WHO issued a press release stating that the COVID report had been removed from the WHO website “because it contained inaccuracies and inconsistencies”.

On 13 and 15 December 2020 and 2 January 2021, Mr G. gave interviews to the Italian press in which he mentioned the complainant.

On 5 January, the complainant’s counsel wrote to the Director, Human Resources and Talent Management, that the statements made by Mr G. in the press constituted “further evidence of retaliation” against the complainant pursuant to the Whistleblowing Policy and that the matter also fell within the scope of the WHO Policy on misconduct in research. In his letter, the complainant’s counsel asked WHO

whether it intended “to disassociate itself from [these] defamatory statements”.

On 1 February 2021, the Director, CRE, referring to the letter from the complainant’s counsel of 5 January 2021, replied to the complainant that regarding his request to be considered under the Whistleblowing Policy, CRE had already provided its advice on 4 November 2020 and that regarding his additional request to be considered under the WHO Policy on misconduct in research, “the assessment was that no specific allegations of misconduct in research could be identified”. CRE concluded its email stating that “[a]s mentioned in our communication of 4 November 2020, we refer to WHO internal process to investigate allegations of wrongdoing with [IOS]”.

On 9 February, IOS prepared a Note for the File entitled “Initial audit review of the process for the publication of the [COVID] report [...]”, in which it found that the COVID report had been published on the WHO website without review and clearance from the Office of the Legal Counsel (LEG).

On 3 March 2021, the complainant submitted his resignation effective 31 March 2021. In his resignation letter, he wrote that “[g]iven the unlawful actions [he] suffered beginning on 11 May 2020 and WHO’s failure to provide whistleblower protection [...] [he] believe[d] there ha[d] been a fundamental breach of [his] contract, leaving [him] with no option but to resign”. On 5 March, WHO accepted the complainant’s resignation, “reject[ing] the assertion that the Organization caused a breach of [his] contract”.

The complainant separated from service on 31 March 2021, whilst Mr G. separated from service on 30 June 2021.

On 1 April 2021, the complainant filed a request for review which he stated was directed against the following decisions:

- “1. The Directors’ [of CRE and IOS] deemed rejection of [the complainant]’s repeated requests to investigate [Mr G.]’s ongoing retaliation against [the complainant], unethical conduct and conflict of interest;

2. Following [the complainant]’s further report of retaliation and misconduct committed in research, the decision of the Director, CRE dated 1 February 2021, determining that [the complainant] was not entitled to protection from retaliation under [the Whistleblowing Policy] and that the wrongdoing that he reported to WHO contained no specific allegations of misconduct in research; and
3. As a result of WHO’s continuing severe breaches of the terms of [the complainant]’s contract (particularly his right to be protected from retaliation, harassment and misconduct and to be entitled to whistleblower protection), WHO’s decision of 5 March 2021, accepting his tender of resignation, which constituted constructive dismissal from WHO.”

By letter signed on 17 June 2021, the Assistant Director-General, Business Operations (ADG/BOS) informed the complainant that he had determined that the Organization had not violated the terms and conditions of the complainant’s employment and that there was no basis for the redress measures he sought. With respect to the complainant’s pleas involving the alleged refusal to investigate Mr G.’s actions, the ADG/BOS indicated that the complainant’s allegations against Mr G. were currently under review by IOS. With respect to CRE, the ADG/BOS stated that the fact that CRE did not recommend protective measures for the complainant did not constitute an administrative decision affecting the complainant’s terms of appointment. He further stated that he considered that the complainant’s concerns had been adequately addressed by CRE. With respect to the complainant’s resignation, the ADG/BOS stated that he had not found any indication that the Organization had constructively dismissed the complainant.

On 15 September 2021, the complainant lodged an appeal before the WHO Global Board of Appeal (GBA), directed against the 17 June 2021 decision.

In its report dated 20 April 2022, the GBA recommended to the Director-General to allow the appeal in part and to award the complainant moral damages in the amount of 40,000 Swiss francs and reimbursement of his legal fees up to a maximum of 10,000 Swiss francs. The GBA found that the complainant was “most probably entitled to whistleblower protection” but that “regardless of whether or not [he] qualified as a whistleblower, the Organization was required,

under the duty of care, to protect him against harm resulting from the publication of the Report” and that “the degree of protection did not reach the level that could be expected from an international organization in the fulfilment of its duty of care”. With respect to the IOS investigation, the GBA observed that the complainant’s allegations against Mr G. remained under investigation by IOS and thus any finding by the GBA would be premature. The GBA nevertheless recommended “a timely conclusion of IOS’s investigation”. Regarding the complainant’s allegations of constructive dismissal, the GBA indicated that it did not find evidence of bad faith or improper purpose in WHO’s actions and that there was no evidence that WHO would have engaged in a retaliatory pattern of action that would have been geared towards getting rid of the complainant. The GBA further found that the “options explored and offered by the Organization to the [complainant] constituted viable and reasonable alternatives to ease the pressure on the [complainant]”.

In September 2022, the ACCC submitted its report regarding the complainant’s claim for service-incurred illness, in which it concluded that there was a direct causal link between the claimed illness episode and the performance of the complainant’s duties.

On 9 December 2022, the Director-General notified the complainant of his decision to reject his 15 September 2021 appeal in its entirety. That is the impugned decision.

On 28 July 2023, IOS informed the complainant that it had completed its initial review of the matter he reported on 5 November 2020 and that it had closed the case because it had determined that the matter did not warrant an investigation.

The complainant asks the Tribunal to recognize that, as of 11 May 2020, he was a whistleblower entitled to protection from retaliation and that WHO breached its obligation to provide a workplace free from retaliation and harassment. He further asks the Tribunal to set aside WHO’s decision to accept his resignation and to find that his resignation constituted constructive dismissal by WHO. He seeks to be reinstated – on a continuing appointment and with backpay – into his previous P-5 position as Coordinator, Healthy Setting Program or in

another P-5 position that would be acceptable to him and commensurate with his qualifications. Alternatively, he seeks the payment of material damages in the amount of three years' salary at the P-5 level. He further claims moral and exemplary damages in the amount of 350,000 Swiss francs as well as legal fees in the sum of 40,000 Swiss francs, including for the internal appeal procedure. Finally, he seeks the payment of interest as well as "[a]ny other relief the Tribunal deems fair and necessary".

WHO asks the Tribunal to reject the complaint in its entirety and submits that some aspects of the complaint are irreceivable.

#### CONSIDERATIONS

1. The following discussion proceeds against the background already set out in the facts described above. At the outset, the Tribunal will address, in considerations 1 to 4, the preliminary issues regarding disclosure of documents, confidentiality, receivability, and the submission of the *amicus curiae* brief.

The complainant requests the disclosure of documents concerning the review of his allegations of wrongdoing and any actions that were taken by the Office of Compliance, Risk Management and Ethics (CRE) and the Director-General in this respect. This request has already been rejected by the President of the Tribunal, without prejudice for a different decision by the Tribunal. The Tribunal is satisfied, in light of WHO's reply, that all relevant correspondence and decisions taken on this matter have already been shared with the complainant. The complainant also requests the disclosure of the travel authorization to Bergamo, Italy, issued to Mr G. during November 2020 and a copy of Mr G.'s report of activities. WHO has provided the Tribunal with a copy of Mr G.'s travel authorization which details Mr G.'s activities in Bergamo. Accordingly, the disclosure request is moot in this respect.

2. In his rejoinder, the complainant alleges that WHO, in its reply, disclosed confidential information about the settlement discussions, which should not be taken into account by the Tribunal. It will not.

3. As the complaint will be dismissed on the merits, there is no need to address the receivability issues raised by the Organization, other than the one adjudicated in consideration 22 below.

4. The Whistleblowing International Network, Government Accountability Project, Transparency International, Transparency International Italy, Globaleaks, and Whistleblower Aid submitted an *amicus curiae* brief. It has been accepted. However, the Tribunal recalls that the scope of an *amicus curiae* brief is to clarify points raised by a complainant with the Tribunal (see Judgments 2422, consideration 2, and 2420, consideration 7), and not to enlarge the scope of the complaint. Firstly, the *amicus curiae* brief contends on multiple grounds that WHO's whistleblower framework and policies are not in line with international law principles and international best practices on whistleblower protection and fair procedures. Secondly, the *amicus curiae* brief contends on multiple grounds that the WHO Global Board of Appeal (GBA) lacks the requisite independence, neutrality, and professionalism. Both these arguments have not been raised by the complainant, neither internally, nor in the present complaint. Thus, these allegations are beyond the scope of the complaint. They will not be taken into account.

5. In his first and second pleas, which are interrelated, the complainant contends that he was a victim of retaliation and entitled to protection as a whistleblower and that WHO breached "its procedures on whistleblowing". He alleges that:

- he reported wrongdoing by Mr G. and was a victim of retaliation by Mr G. and by WHO;
- although the GBA correctly found that he was "most probably entitled to whistleblower protection", the impugned decision completely ignored the GBA's findings;
- he was a victim of retaliation in light of the relevant provisions of the WHO Whistleblowing and Protection Against Retaliation Policy and Procedures (the "Whistleblowing Policy" or "the Policy") in

force as from 2015, and of the WHO Policy on misconduct in research.

6. It is useful to recall the definitions of whistleblowing and retaliation contained in the Whistleblowing Policy, in force at the material time.

As to whistleblowing, the Policy, in its introduction, established that one of its objectives is to:

“Define ‘whistleblowing’ by differentiating between wrongdoing that constitutes risk of corporate significance and individual grievances that are administered through other established mechanisms”.

and it further added:

“9. This policy defines ‘whistleblowers’ as individuals who report suspected wrongdoing that implies a significant risk to WHO, i.e. harmful to its interests, reputation, operations or governance. [...]”

10. Accordingly, not every type of report of wrongdoing falls under this policy. For example, this policy is not intended to cover the following types of reporting:

[...]

- Personnel issues where staff have a personal interest in the outcome;
  - Harassment complaints and personal disagreements or conflicts with colleagues, or with one’s supervisors.
11. Individual grievances, such as complaints regarding discrimination, harassment, or other conflictual interpersonal situations in the workplace are administered separately in accordance with the provisions detailed in the eManual.”

Thus, whistleblowing is different from individual grievances and not every report of wrongdoing falls within the Policy.

As to the definition of retaliation, the Policy read:

“12. Retaliation is defined as a direct or indirect adverse administrative decision and/or action that is threatened, recommended or taken against an individual who has:

- reported suspected wrongdoing that implies a significant risk to WHO; or
- cooperated with a duly authorized audit or an investigation of a report of wrongdoing.

13. Retaliation thus involves three sequential elements:
- a report of a suspected wrongdoing that implies a significant risk to WHO, i.e. is harmful to its interests, reputation, operations or governance;
  - a direct or indirect adverse action threatened, recommended or taken following the report of such suspected wrongdoing; and
  - a causal relationship between the report of suspected wrongdoing and the adverse action or threat thereof.”

The Tribunal further notes that, pursuant to paragraph 19 of the Whistleblowing Policy:

“Retaliation will be found to have happened unless the administration can demonstrate by clear and convincing evidence that the act which is suspected to be retaliatory would have occurred even if the whistleblower had not reported a suspicion of wrongdoing. [...]”

As to the proceedings for reporting wrongdoing and retaliation, the Policy provided the following:

“36. In all cases, supervisors or managers who receive a report of suspected wrongdoing must act to address it fully and promptly and either seek the guidance of CRE for ethics advice or other specialized relevant mechanisms, or report to [the Office of Internal Oversight Services (IOS)] as applicable.

[...]

40. Whistleblowers who believe that they are being subjected to retaliation must contact CRE directly.”

As to the actions to be taken by CRE, the Policy stated that:

“44. CRE conducts the initial intake on individual inquiries about retaliation, provides advice, makes referrals, reviews complaints and may recommend measures to protect the whistleblower against retaliation.

[...]

45. CRE’s preliminary review determines whether a causal relationship between the suspected retaliatory action and the previous reporting of wrongdoing can be established (referred to as a ‘prima facie’ review). CRE undertakes the preliminary review in the following sequence:

- CRE acknowledges receipt of information reported internally, and communicates with the whistleblower to define immediate next steps.

- CRE gives the whistleblower within 30 days an indication of the period of time it considers reasonable and necessary to undertake the preliminary review.
- CRE normally seeks to conduct a preliminary review within 90 days to determine whether there is a causal link between the whistleblower's report of suspected wrongdoing and the suspected retaliation.
- CRE has access to all offices and staff members and to all records and documents except for medical records which can only be made available with the express consent of the staff member concerned.
- Should CRE find that there is a credible case of retaliation, it will refer the case in writing to IOS for investigation and will notify the whistleblower.

[...]"

As to the measures aimed at the protection of the whistleblower, the Policy stated:

- "25. CRE may recommend appropriate measures to the Director-General/Regional Directors to safeguard the interests of and protect the whistleblower from retaliation at any time from the moment the whistleblower comes forward. Protection measures are recommended with the consent of the whistleblower and can include without being limited to the:
- temporary reassignment;
  - transfer to another office or function for which the whistleblower is qualified;
  - placement on special leave with full pay; or
  - any other appropriate action on a case-by-case basis, including security measures.
26. Protection measures may also include temporary reassignment, transfer, placement on special leave or any other appropriate action on a case-by-case basis with regard to the suspected retaliator."

Interim measures were also provided for, as follows:

- "46. Where CRE considers that additional workplace harm could occur while suspected retaliation is either under preliminary review or under investigation, CRE may recommend during the investigation that the Director-General/Regional Directors take appropriate interim measures to safeguard the interests of the whistleblower. These measures include, but are not limited to, temporary reassignment, transfer to another office or function for which the whistleblower is qualified, or placement on special leave with full pay, or other appropriate measures on a case-by-case basis – with the consent of the whistleblower."

In light of the above-quoted rules, to determine whether a staff member has suffered retaliation, three elements must occur concurrently:

- (i) a report of wrongdoing in which the reporter is not the alleged victim and has no personal interest in the outcome;
- (ii) an adverse action or decision that is threatened, recommended or taken following a report of a whistleblower; and
- (iii) a causal link between the whistleblowing report and the adverse action against the reporter; the necessity of the causal link implies that there is no retaliation if the administrative decision alleged to be retaliatory would have been adopted even if the complainant had not made a report of misconduct (see Judgment 4858, consideration 26).

Pursuant to paragraph 19 of the Policy, the presumption that retaliation is found to have happened presupposes that the retaliatory conduct follows a report of wrongdoing (see Judgment 4858, consideration 7).

The protection of the whistleblower may be recommended by CRE either upon report of the alleged whistleblower (paragraph 40), or provided that supervisors or managers receive a report of wrongdoing (paragraph 36).

The Tribunal accepts, in principle, the complainant's and the *amicus curiae's* contention that "[s]uffering retaliation is not a condition for qualifying as a whistleblower". However, in light of the above-quoted rules, firstly it has to be established whether the complainant could be qualified as a whistleblower. Secondly, the qualification as a whistleblower is not sufficient, by itself, to compel the Organization to adopt protective measures, where it is assessed that there is no evidence or risk of retaliation.

7. In order to assess whether the determination by CRE that the complainant had not suffered retaliation was lawful, it must be established:

- (1) whether and when the complainant could be identified as a whistleblower;

- (2) whether and when he was the victim of adverse actions that were threatened, recommended, or taken following a report as a whistleblower; and
- (3) the causal link between the report of suspected wrongdoing and the adverse action or threat thereof.

It is useful to recall the sequence of the relevant events.

On 11 May 2020, the complainant informed CRE that he had received a “threat email” from Mr G. In his complaint, he contends that on the same day he informed his supervisor and the Director, Business Operations, EURO and the report drafting team “of Mr G.’s actions”. However, in the record, there is an email addressed on 11 May 2020 by the complainant to his supervisor informing her that he was on sick leave, but in this email he did not report the alleged threats.

In an email of 15 May, the complainant reported to the Ombudsman that he had received “dismissal threats” from Mr G. and that Mr G. had a conflict of interest with WHO. The same email was forwarded by the complainant on 16 May 2020 to the Ethics Officer.

These emails were sent by the complainant while he was on sick leave.

In a 13 September 2020 email sent to the Ethics Officer, the complainant reiterated that Mr G. had a conflict of interest. Reporting Mr G.’s alleged conflict of interest, the complainant also wrote on 27 May 2020 to the Regional Director, EURO, who replied, and, on 28 May 2020, to the Director-General, who never replied. However, he did not allege retaliation in those emails.

The complainant again reported Mr G.’s alleged conflict of interest and other wrongdoings in two emails dated 9 and 21 October 2020 addressed to CRE. For the first time, in the 21 October 2020 email, he identified himself as a whistleblower and contended that he had suffered retaliation. He alleged that the retaliation suffered consisted of “dismissal threats, abuse of power by [Mr G.], complacency by top level [Headquarters (HQ)] officials” and that the dismissal threats amounted to retaliation.

In response to his emails of 9 and 21 October 2020, CRE, by email of 4 November 2020, denied that retaliation had occurred based on two grounds:

- the alleged “dismissal threats” occurred before and not after the complainant’s report of misconduct, thus, Mr G.’s conduct, albeit inappropriate, could not amount to retaliation; and
- the complainant was not under Mr G.’s supervision, thus the possibility of retaliation was excluded.

However, CRE committed itself to “closely monitor” the situation, and that “in respect of [Mr G.] and his allegedly inappropriate comments, including inappropriate language in an email addressed to [the complainant] on 11 May 2020, [CRE] [would] be in touch to discuss internal mechanisms to address this matter”. CRE further indicated that a possible temporary reassignment to Bulgaria had been discussed with the complainant.

As a result of numerous Italian and international press articles and media interviews by Mr G., the complainant’s counsel, by letter of 5 January 2021, brought to WHO’s attention Mr G.’s most recent acts of alleged “public retaliation” and explained that in addition to constituting retaliation, his unlawful actions also breached the WHO Policy on misconduct in research.

From 11 January until 14 February 2021, the complainant was placed on special leave with pay.

By email of 1 February 2021, in response to the 5 January 2021 letter, the Director, CRE, noted that, regarding the complainant’s request to be considered under the Whistleblowing Policy, CRE had already provided its advice on 4 November 2020 and that, regarding his additional request to be considered under the WHO Policy on misconduct in research, “no specific allegations of misconduct in research could be identified”. CRE concluded its email stating that “[a]s mentioned in our communication of 4 November 2020, we refer to WHO internal process to investigate allegations of wrongdoing with [IOS]”.

On 19 February, the complainant wrote to the Director-General complaining about retaliation.

On 3 March 2021, the complainant sent a letter of resignation, effective as from 31 March 2021.

After his resignation, on 1 April 2021, the complainant lodged a request for review, *inter alia*, of the 1 February 2021 decision which he considers denied his right to protection as a whistleblower.

8. In light of the rules quoted in consideration 6 above and of the sequence of the events recollected in consideration 7 above, the Tribunal is satisfied that the impugned decision and the previous decisions of 4 November 2020, 1 February 2021, and 17 June 2021 lawfully concluded that the complainant had not suffered retaliation and was not entitled to the protection granted to whistleblowers. Firstly, the Tribunal notes that, in reporting alleged wrongdoing by Mr G., the complainant alleged to be the victim of threats perpetrated by Mr G., and, thus, had a personal interest in the outcome of his report. This circumstance, by itself, precludes the complainant from qualifying as a whistleblower, in light of the Policy in force at the relevant time, at least for what concerns the report of “threats”. However, the complainant reported not only “threats” but also a conflict of interest and an alleged abuse of authority, in relation to the withdrawal of the COVID report from the WHO website, and an alleged misconduct in research. In this respect, it is not possible to draw a clear line and establish whether the complainant’s report was prompted (only) by a personal interest (the complainant, being the one who ordered the publication of the COVID report, had a personal interest in demonstrating that its withdrawal was unlawful) or whether it might be identified, at least in part, as an impartial and independent report. Assuming that in such a situation where personal and general interest overlap, the Whistleblowing Policy should be applied, and accepting that the complainant might have qualified as a whistleblower, in any event WHO correctly found that he did not suffer retaliation and was not at risk of retaliation. In the following considerations, the Tribunal will address in detail the complainant’s arguments in this respect.

9. As to the circumstance that the impugned decision partially departed from the GBA's opinion which found that the complainant "most probably" was a whistleblower and that he was entitled to moral damages, the Tribunal recalls that the executive head of an organization has an obligation to provide reasons where it rejects the conclusions and recommendations of the internal appeal body. This is to ensure that there will be no room for arbitrary, unprincipled, or even irrational, decision-making (see Judgments 4307, consideration 15, 3208, consideration 11, and 2699, consideration 24). In the present case, the impugned decision provided sufficient reasons supporting the Director-General's disagreement with the GBA's opinion, except in relation to the breach of the duty of care and the award of moral damages, as will become clear later.

10. As to the alleged "dismissal threats", the Tribunal notes that the emails sent by Mr G. to the complainant on 11 May 2020 that have been provided by the parties do not contain any threat. The complainant contends that he was threatened verbally during a phone call that same day, but he did not state what Mr G. said which would constitute a threat and there is no evidence in the record of the content of the phone conversation, other than the vague reference made by the complainant to a threat of dismissal.

In any event, even if it were to be accepted that the alleged "dismissal threats" actually occurred, they would not amount to retaliation in light of the statutory definition, as they occurred before and not after the report of wrongdoing (see Judgment 4858, consideration 7).

The same reasoning applies to the alleged "misconduct in research" which was reported by the complainant for the first time on 5 January 2021. On the one hand, as the report of the alleged misconduct in research was filed on 5 January 2021, the alleged actions by Mr G., which occurred before 5 January 2021, cannot be construed as retaliation. On the other hand, the alleged misconduct in research was reported in vague terms and, thus, in its 1 February 2021 decision, CRE correctly found that no specific allegations of misconduct in research could be identified.

11. The complainant's emails of 11 May 2020 were too vague to be identified as a report of wrongdoing. Nor can his email of 15 May 2020 addressed to the Ombudsman be identified as a report of wrongdoing, as communications to the Ombudsman are confidential. Thus, the Ombudsman cannot be considered a "supervisor" or a "manager" committed to seeking advice from CRE.

His emails of 16 May 2020 and 13 September 2020 referring to the original threats and to the withdrawal of the COVID report were not sufficient to establish that the complainant was a whistleblower, also considering, as already said, his personal interest in the matter. In any event, as of 11 May 2020 and until his resignation, the complainant was often either on annual leave, special leave, compensatory leave, or on sick leave (which was extended seven times between 11 May 2020 and 1 March 2021 until his resignation was effective). In other words, the complainant was absent from work for a large amount of time between 11 May 2020 and his resignation, and he has not provided evidence that the Organization was able to perceive, before 9 October 2020, that he was at risk of retaliation and was, thus, obliged to take action *ex officio* before 9 October 2020. A report of wrongdoing can be clearly identified only in the complainant's emails of 9 and 21 October 2020. Upon receipt of the complainant's 9 and 21 October 2020 emails, CRE promptly examined the case and replied in a timely manner with the 4 November 2020 decision. This decision was lawful as, even though there was a report of wrongdoing, on the one hand, the complainant had a personal interest in its outcome, and, on the other hand, there was no evidence of retaliatory actions against him. As noted above, the reported wrongdoings were identified by the complainant as "dismissal threats, abuse of power by [Mr G.], complacency by top level HQ officials". As already stated, establishing retaliation requires not only a report of wrongdoing, but also that the reporter has no personal interest in the outcome and that there is evidence of threatened retaliatory actions. The only alleged actions that the complainant clearly identified as being retaliatory, reported on 9 and 21 October 2020, were the "dismissal threats", which did not amount to retaliation for the reasons already stated. The Tribunal agrees, in principle, with the *amicus curiae* contention that the Policy does not require that retaliation come from

within a whistleblower's chain of command. Nonetheless, the existence at least of a risk of retaliation (if not the occurrence of the actual retaliation) must be assessed having regard to the circumstances of the case. In the present case, this risk, in the absence of any evidence to the contrary, is purely speculative.

12. In addition to the circumstance that the complainant, in his 21 October 2020 email, had identified as retaliation only "dismissal threats", the Tribunal notes that there is no evidence in the record of other possible retaliatory actions attributable to WHO, which occurred after the complainant's report of wrongdoing. He maintained his work position and got the maximum rating in the relevant performance appraisal reports (PARs). Moreover, he was constantly advised and supported as to the attitude to be maintained with the Italian media and the Italian Public Prosecutors.

13. The complainant refers to the withdrawal of the COVID report from the WHO website, the reasons for such withdrawal, the WHO press releases issued on 23 September 2020 and on 4 December 2020, explaining to the press and the media the reasons for the retraction of the said report. He contends, in essence, that:

- Mr G. "sabotaged" the publication of the COVID report;
- the COVID report was withdrawn to cover Mr G.'s conflict of interest and the fact that Italy did not have an updated national pandemic plan at the time of the COVID-19 pandemic outbreak, and Mr G. was, allegedly, co-responsible for this failure in his former capacity as a Director of the Italian Ministry of Health.

WHO denies this account of the facts. There is evidence in the record that soon after its publication, the COVID report was removed upon request from the WHO Country Office (CO) for China and was never republished. On 23 September 2020, the WHO Europe press office issued a press release stating that the COVID report had been "erroneously" posted to the WHO/EURO website and "should not be referred to as a WHO document". It further stated that they had "updated [their] publishing procedures so that the most rigorous quality

check is ensured also in emergency times”. On 4 December 2020, WHO issued a press release stating that the COVID report had been removed from the WHO website “because it contained inaccuracies and inconsistencies”. On 9 February 2021, IOS prepared a Note for the File entitled “Initial audit review of the process for the publication of the [COVID] report”, in which it found that the COVID report had been published on the WHO website without review and clearance from the Office of the Legal Counsel (LEG).

14. The Tribunal notes that it is not its role to assess the reasons for the retraction of the COVID report, as the publication and withdrawal of this research fall within the scientific responsibility of WHO. Such actions concerning scientific research are not administrative decisions in the meaning of the Tribunal’s Statute and, thus, do not fall within the Tribunal’s competence. The Tribunal has only to assess whether the withdrawal of the COVID report and the related press releases issued by WHO may be construed as retaliation against the complainant. The documents in the record show the following.

- (i) On 14 April 2020, the complainant shared an outline of the COVID report with Mr G., who, in turn, shared it with the Italian Ministry of Health and received endorsement of the approach “in principle”.
- (ii) WHO refers that it is standard practice at WHO to receive the input of the governments of Member States that are the subject of publications to ensure fact-checking and the veracity of scientific and other data presented in WHO reports.
- (iii) By an email of 4 May 2020, the complainant was informed that the publication of the COVID report would need “Publications Review Committee [(PRC)] clearance at [HQ]”.
- (iv) On 5 May 2020, the complainant submitted a request to publish the COVID report and the WHO Health Emergency, European Regional Office (WHE/EURO), commented that “there [were] several politically sensitive phrases in this report” and that “[t]he first 10-15 pages need significant attention and have inaccuracies and technical errors”. An email addressed to the complainant on

5 May 2020 stated: “The report is comprehensive but the document still needs some more attention before it can be finalized, in particular the first half of the document, which needs improving to be made significantly less speculative, precise and technically correct. There is also a significant missing piece in the report which is any information on the impact on health service delivery for non-COVID-19 cases – this is mentioned in the section that addresses mental health/cancer etc. It is also referred to in the scaling up of critical services section and otherwise glaringly absent from the piece. I would also like for [Ms S.] to review the section on communication given her involvement in the early stages – she may have some additional comments.”

- (v) On 6 May 2020, the complainant replied that he would “address [the comments] as feasible” and assured that he was “fully cognizant” of the “political sensitivity” and that he “will ensure that the final text does not contain anything which could be sensitive”.
- (vi) On 8 May, the publication clearance was granted by: (a) the WHO Programme Manager (Senior Emergency Officer); (b) the Regional Emergency Director; and (c) the European Regional Office for Publications (EURO/PUB).
- (vii) The Director, Quality Assurance/Norms and Standards warned that there was not enough time for the PRC at Headquarters to provide a useful review and that he himself should have been allowed sufficient time for the review.
- (viii) The complainant sent the draft report for publication clearance to the PRC.
- (ix) The COVID report was reviewed by the PRC during a meeting held on 11 May 2020. The publication was approved with the following conditions: (1) “Please confer with LEG regarding the timeline of WHO action taken provided in Box 1, prior to any publication, given the controversy around this point”. (2) “Please review for style to ensure consistency in tone of text”. (3) “Next

steps: This document was approved. Once the above concerns have been addressed, please proceed to technical editing”.

- (x) On 11 May 2020, the complainant informed Mr G. that the COVID report was being published and printed on that day; Mr G. asked the complainant, among other things, to correct the reference to the Italian pandemic plan on the basis of data available from the Italian Ministry of Health that indicated that it had been updated in December 2016.
- (xi) The complainant asked his team on the same day to make the changes “as apparently there is an error. Para 2.1 [of] the text is wrong. The pandemic plan was prepared and updated.” The complainant also stated that the “launch [of the report] is postponed till further notice” as “[Ms] M[.] cannot make the changes until tomorrow evening [12 May]” but “the copies which are already printed [...] can go on and be shipped as they are”. He finally mentioned that “[a]fter this is done, [he] will withdraw from all [his] WHE functions”. The complainant informed his supervisor that he was on certified sick leave effective 11 May 2020 until the end of the following week when he would be reassessed by a physician and that he would “only monitor the publication until this is launched and published”.
- (xii) By email of 12 May, the complainant received the minutes of the 11 May 2020 meeting held by the PRC.
- (xiii) Mr G. and the Programme Area Manager External Relations, WHE/EURO, provided the complainant with further comments on the COVID report on 11 and 12 May 2020. They emphasized the need to change the tone of the COVID report and to verify its technical and factual accuracy.
- (xiv) Also, on 12 May 2020, the complainant informed the EURO, Communications Office, WEB Team as follows: “Dear WEB team, here is the formal approval from HQ on the publication. The publication has therefore clearance from: me, IMT manager, Acting Director Emergency, Chief Scientist-HQ, and of [Regional Director (RD)]. As you all know, we were forced to withhold the launch yesterday due to some kind of internal

pressure. Therefore, today some slight modifications will be made and tomorrow you will receive the file [...] We should aim at launching it tomorrow afternoon. Can you confirm it is fine, and that there are no other COVID publications in the homepage, to give prominence to the piece? [...] the parcel can go ahead as planned as changes will be more of aesthetic nature. [...]"

- (xv) On 13 May, the report was published by EURO without LEG's review and clearance.
- (xvi) On 14 May, the WHO Representative Office in China contacted EURO and the complainant directly with an urgent request to remove the COVID report from the EURO website: "Kindly pull the document off the web immediately. Consider this an emergency. This document is inaccurate and contradicts the HQ timeline in a couple of places. The box on China needs to be urgently checked by HQ. [...]"
- (xvii) The COVID report was removed from the EURO website pursuant to a request from the complainant, who wrote the following to EURO/PUB: "Dear PUB team, I am really sorry but we were asked by the CHINA CO to remove the document immediately, for a problem with a box in the text. Can you please remove the document from the website (temporarily) and confirm this is done? [...]"
- (xviii) It is uncontroverted between the parties that the COVID report was circulated to approximately 15,000 people during the short period of its publication.
- (xix) Between 14 and 28 May, Mr G. proposed to the Regional Director of EURO (RD/EURO) to set up a small group including two persons from the Italian Ministry of Health to review the report, verify the data and correct errors, with the aim of republishing the report.
- (xx) On 28 May, the complainant wrote to the Director-General requesting a meeting to alert him about the risks of republishing the report with modifications and informing him that he had contacted the Ombudsman and CRE.

- (xxi) On 16 June 2020, the complainant informed his supervisor that his team, and himself, would not participate in any review of the COVID report and if any changes were made to it, their names would have to be removed from the report.
- (xxii) Discussions regarding the review of the COVID report continued until the end of June 2020; however, the complainant remained on sick leave.

The Tribunal is satisfied that the evidence in the record shows the following:

- (a) by an email of 12 May 2020, the complainant requested the publication of the COVID report stating that all clearance requirements were met;
- (b) based on this request, the COVID report was published, notwithstanding that it had not obtained the required prior clearance from LEG;
- (c) such prior clearance was provided for in paragraph 70 of the Code of Conduct for responsible research in force at the material time, pursuant to which:  
“If [a publication] includes any potentially politically sensitive material (such as maps) or commercial names, or there are any doubts about terminology it should be cleared by [LEG]”;
- (d) the complainant rushed the publication of the report despite the fact that he could not have been unaware of the policy concerning the publication clearance and of the need for LEG’s advice, because, on the one hand, he received on 12 May 2020 the minutes of the PRC’s meeting held on 11 May 2020, informing him that LEG’s advice was required, and, on the other hand, this clearance was expressly provided for in paragraph 70 of the Code of Conduct for responsible research applicable at the material time;
- (e) the COVID report was withdrawn at the request of China;
- (f) after its withdrawal, WHO intended to republish the report, provided that it undergo a review, but the team led by the complainant disagreed to the review;

- (g) even prior to the publication of the COVID report, the complainant was told that it contained inaccuracies (see 5 May 2020 email);
- (h) Mr G. did not impede the publication of the COVID report, publication which actually occurred, despite his disagreement about the content of the report. As acknowledged by the complainant, the COVID report was circulated to approximately 15,000 people before its withdrawal, thus, its content, including the part which allegedly damaged Mr G., was well known and had ample media coverage.

In these circumstances, there is no persuasive evidence that the COVID report was withdrawn and not republished in order to shield Mr G. from possible liability.

The complainant considers the statement, contained in the COVID report, that the Italian pandemic plan dated back to 2006 and was not updated, as an uncontroverted fact. Based on this fact, the complainant assumes that Mr G. requested to modify the sentence referring to the 2006 plan as not having been updated in order to shield himself from possible liability before Italian Courts, for failure to update the plan. The Tribunal notes that the facts are not uncontroverted and are, to date, still under investigation. The COVID report stated that the Italian pandemic plan was approved in 2006 and not updated. In his 11 May 2020 email addressed to the complainant, Mr G. remarked that, according to the website of the Italian Ministry of Health, the plan dated back to 2016 and not to 2006. As a matter of fact, the 2006 plan was “reviewed and confirmed” in 2016, as stated on the Italian Ministry of Health website. However, it is unclear whether the 2016 confirmation of the 2006 plan included an actual update or whether it merely confirmed it as written. There is evidence in the record that this is still under investigation by the Italian authorities. Mr G. underwent a criminal investigation in Italy for alleged failure to update the plan at the time he was in charge of it as a Director of the Italian Ministry of Health. However, as submitted by the Organization in its surrejoinder, Mr G. was indicted but not sentenced, as the Public Prosecutor of Rome requested the investigation be dismissed and the charges against Mr G. were not pursued. Additionally, as highlighted by the complainant

himself, these issues are still under parliamentary investigation to date, as an Italian law (Act No. 22/2024) set up a parliamentary commission of enquiry entrusted, *inter alia*, to assess the issues concerning the pandemic plan of 2006, including its activation and update. In these circumstances, it was not unreasonable for WHO to keep a cautious attitude about a highly sensitive and controversial issue. As a result, there is no evidence that the withdrawal and non-republication of the COVID report was aimed at shielding Mr G. from possible liability, or that this withdrawal amounted to an abuse of authority or to an act of retaliation against the complainant. Additionally, even if the complainant's suspected reasons for the removal of the COVID report were to be accepted, there is no evidence that such removal amounts to a retaliatory initiative against him. Irrespective of whether WHO had legitimate or illegitimate reasons for the retraction of the COVID report, the reasons are related to the relationship between WHO and two of its Member States (China and Italy). It is apparent that the withdrawal would have occurred in any event, even if the complainant had not reported the wrongdoing allegedly committed by Mr G. As earlier stated, according to the Tribunal's case law, if the administrative decision, alleged to be retaliatory, would have occurred even if the complainant had not made a report of misconduct, that decision cannot be considered retaliatory (see Judgment 4858, consideration 26).

15. Based on the same grounds illustrated in consideration 14 above, the two press releases issued by WHO on 23 September and 4 December 2020 cannot be construed as acts of retaliation against the complainant. The complainant asserts that the Organization defamed him by means of the two said press releases. However, this is a mere assertion which is unsubstantiated.

16. The complainant also refers to the fact that he was summoned by an Italian Public Prosecutor and that WHO did not waive his immunity from national jurisdiction. Pursuant to Article 1.9 of the Staff Regulations:

“The immunities and privileges attaching to the World Health Organization by virtue of Article 67 of the Constitution are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to staff members for non-performance of their private obligations or failure to observe laws and police regulations. The decision whether to waive any privileges or immunities of the staff in any case that arises shall rest with the Director-General.”

Considering that privileges and immunities are conferred to staff in the interests of the Organization, the refusal by the Organization to waive the immunity falls within its discretion. Thus, such a refusal cannot by itself be construed as an act of retaliation, also considering that the immunity is aimed at the protection of the staff, unless there is specific evidence that it is; and in the present case there is no such evidence. In addition, WHO, in its 3 November 2020 communications addressed to the Public Prosecutor of Bergamo and to the Italian Ministry of Foreign Affairs, invoked immunity from national jurisdiction not only for the complainant, but also for all the co-authors of the COVID report. It must also be noted that WHO affirms in its reply, without being contradicted by the complainant, that the Italian authorities also had the possibility of requesting a waiver of the immunities, but they never did so. Nor is there evidence of unequal treatment between the complainant, whose immunity was not waived by WHO, and Mr G., who was also summoned and interrogated by a Public Prosecutor. In its reply, WHO submits that Mr G. never sought WHO’s authorization to be interrogated by the Public Prosecutor of Bergamo. The travel authorization provided by WHO for Mr G.’s trip to Bergamo was limited to him visiting the Bergamo hospital in the wake of the COVID-19 response. Any statements that were made by Mr G. to the Public Prosecutor during this official visit were not approved by WHO, were made without prior knowledge of the Organization, and were made in his private capacity. The Organization clarified to the Public Prosecutor that Mr G. had appeared in his personal capacity and without authorization to speak on behalf of WHO or with regard to matters pertaining to WHO. The Organization subsequently provided information of a technical nature, including with regard to the Italian pandemic preparedness plan and the COVID report that was removed. In any event, on 15 December 2020, the complainant was also heard in his

personal capacity by the Italian Public Prosecutor, and this personal initiative of the complainant was not subject to reprisal by the Organization.

17. The complainant further refers to the pressure he was under from the Italian media, which he describes as “harassment”. However, having regard to the circumstances of the case, WHO cannot be held responsible for leaking the COVID report to the press or for the conduct of the Italian media. The COVID report was published upon the initiative of the complainant and circulated, as already stated, to approximately 15,000 people before its withdrawal. Having regard to the pandemic situation and the media attention, WHO was not in a position to thwart such media pressure, and it moreover assisted the complainant with regard to the attitude to be kept towards the media. As aptly noted by the GBA, the complainant contributed to the escalation of the situation, by having pushed for the publication of the COVID report before receiving formal clearance, and by releasing a number of interviews to the media, whilst still in service with WHO.

18. As to the press, media interviews and other communications released or made by Mr G., and considered by the complainant to be defamatory, it is apparent that Mr G. acted in his personal capacity and not as a representative of WHO, and, thus, Mr G.’s actions cannot be construed as retaliation by the Organization.

19. While not having been subject to retaliation, the complainant’s suffering was in any event acknowledged by the Organization, as, in his 15 September 2022 decision, the Director-General, endorsing the recommendation of the Advisory Committee on Compensation Claims (ACCC), recognized that there was “a direct causal link between the claimed illness’ episodes and the performance of [the complainant]’s functions” for the period from 11 May 2020 to 31 March 2021, even if that decision stated that “[t]his does not imply that the Organization is responsible for causing such an accident or illness”. The Organization acknowledged that the complainant was entitled to the reimbursement of medical expenses for that period and, if needed, of expenses for

psychological support, for an additional six-month period up to 30 September 2021.

20. It must also be noted that the complainant was offered a temporary reassignment to a different duty station. He was also granted a combination of periods of leave since 11 May 2020, including being placed on special leave with full pay after his report of 5 January 2021. Thus, the Organization discharged its duty of care towards the complainant in this regard.

21. The complainant further relies on events, which occurred after his resignation, in order to demonstrate that he was entitled to protection as a whistleblower. He submits that:

- since 2022, Italian Public Prosecutors from different Courts were investigating Mr G. for potential violations of the Italian Criminal Code such as private violence towards the complainant, and negligence by a public employee for failing to update the Italian pandemic plan;
- the case concerning private violence towards the complainant was closed on 1 November 2022 after Mr G. asserted privileges and immunities by virtue of his former employment with WHO;
- Mr G. was indicted for making false statements in front of the Public Prosecutor about his role in suppressing the COVID report and for having submitted to WHO false statements about Italy's pandemic preparedness.

The Tribunal notes that events which postdate the adoption of the impugned decision cannot, as a rule, be taken into account (see, for example, Judgment 3037, consideration 11). Moreover, the events alleged by the complainant are based on press articles and not on public decisions rendered by the Italian Public Prosecutors or Criminal Courts. The complainant admits that Mr G. was never found guilty of private violence towards him, thus, the alleged "dismissal threats" remain unproven. There is no evidence to date that Mr G. has been sentenced for false statements or for failure to update the Italian pandemic plan. On the contrary, in its surrejoinder, the Organization submits that in

November 2023 the Public Prosecutor of Rome asked that the criminal investigation into Mr G. be dismissed in this respect.

In conclusion, the first and second pleas are unfounded and are rejected.

22. In his third plea, the complainant contends that the Organization implicitly rejected his request for an investigation into Mr G. for retaliation, unethical conduct and conflict of interest. The Tribunal will address the receivability issues raised by WHO on this aspect of the case. It submits, among other things, that the complainant's claims challenging the "deemed rejection" of his request to investigate Mr G.'s misconduct is irreceivable *ratione temporis*. The Tribunal notes that the complainant reported the matter to IOS on 5 November 2020 and to the United Nations Office of Internal Oversight Services (UN/OIOS) on 6 December 2020; on 23 December 2020, he consented to the UN/OIOS sharing his report with IOS. There is no evidence in the record that IOS issued an implied decision containing a refusal to investigate. The IOS decision was adopted later, on 24 May 2023, and the complainant was notified on 28 July 2023 that the case had been closed. On 25 September 2023, he filed a separate request for review of this decision which was still pending at the time of the filing of the present complaint. Thus, on the one hand, the 24 May 2023 decision to close the case as "the matter [did] not warrant an investigation"\* is outside the scope of the present complaint, and, on the other hand, the claim that the Organization implicitly rejected his request for investigation, is irreceivable for lack of a challengeable decision at the time this complaint was filed. Even if it were to be admitted that there was an implied rejection of the complainant's request, the claim would nonetheless be irreceivable *ratione temporis*. Pursuant to Staff Rule 1225.2:

"1225.2 If a staff member has submitted a written request relating to the terms of his appointment, the request shall be deemed to have been rejected if no definitive reply is received within:

---

\* *Recte.*

- 1225.2.1 sixty (60) calendar days for staff assigned to headquarters and to regional offices;
- 1225.2.2 ninety (90) calendar days for staff assigned to other duty stations.
- 1225.3 A request for administrative review must be filed no later than sixty (60) calendar days from the date on which the staff member received written notification of the contested final administrative decision or within sixty (60) calendar days of a deemed rejection under Staff Rule 1225.2.”

Considering that the complainant reported the matter to IOS on 5 November 2020, the “deemed rejection” would have occurred on 4 January 2021, and the complainant should have lodged his application for review by 5 March 2021. Thus, the request for review lodged on 1 April 2021 would be irreceivable as time- barred.

23. In his fourth plea, the complainant alleges that his resignation amounts to constructive dismissal. The Tribunal recalls its case law on this subject matter. In Judgment 4231, consideration 10, citing Judgment 2745, consideration 13, the Tribunal stated that constructive dismissal signifies that an organization has breached the terms of a staff member’s contract in such a way as to indicate that it will no longer be bound by that contract. A staff member may treat that as constituting constructive dismissal with all the legal consequences that flow from an unlawful termination of the contract, even if she or he has resigned (see also Judgments 4665, consideration 6, 4383, consideration 15, and 2435, consideration 17). In Judgment 4662, consideration 18, the Tribunal also held that if staff members allege that an organization acted maliciously, under false pretences and with the aim of taking advantage of the situation to the staff members’ detriment, the complainants bear the burden of proving malice and bad faith. Allegations of this nature require proof that goes beyond mere conjecture or speculation.

In the present case, there is no evidence that the voluntary resignation tendered by the complainant amounted to constructive dismissal. There are no elements which reveal that the Organization acted in a manner inconsistent with the maintenance of the employment contract. The mere fact that the Organization found that the complainant

had not been subject to retaliation and that there was no need for whistleblower protection, which the Organization did lawfully, is not inconsistent with the maintenance of the employment relationship. On the contrary, as from 11 May 2020 until the resignation letter, the Organization acted in a manner which was consistent with the maintenance of the employment relationship, namely:

- CRE promptly decided on the complainant’s allegations of retaliation, even though the decisions were not in his favour;
- CRE committed itself to monitor the situation;
- CRE constantly supported and advised the complainant;
- the complainant was granted a combination of periods of leave since 11 May 2020;
- WHO offered the complainant an alternative, temporary position;
- WHO assisted the complainant in his relationship with the Italian press and with the Italian Public Prosecutors;
- the supervisors of the complainant assigned him the maximum rating in the relevant PAR.

In conclusion, the complainant’s separation must be viewed as voluntary resignation and cannot be requalified as constructive dismissal. As a result, the fourth plea is unfounded.

24. In his fifth plea, the complainant alleges that WHO wrongly accepted his resignation without prior assessment of his medical condition, which he considers was linked to the alleged illegal action of the Organization. On a subsidiary basis in respect to the allegation of constructive dismissal, he submits that:

- WHO failed to organize an urgent psychiatric assessment before accepting his resignation, despite his request to the WHO Staff Physician;
- his request was justified due to his medical condition;
- the psychiatric assessment would have allowed the Organization to make an informed determination about the complainant’s capacity to submit a resignation, as well as about the finding of a direct

causal link between the alleged mistreatment he had suffered at WHO and his medical condition.

This plea is unfounded. Pursuant to Staff Rule 1085:

“MEDICAL EXAMINATION ON SEPARATION

Prior to separation, a staff member may be required to undergo a medical examination by the Staff Physician or by a physician designated by the Organization. If a staff member fails to undergo this medical examination within a reasonable time limit fixed by the Organization, then claims against the Organization arising out of illness or injury which allegedly occurred before the effective date of separation shall not be entertained; furthermore, the effective date of separation shall not be affected.”

The wording of this Staff Rule evidences that the request for a medical examination of a staff member prior to separation is to be made by the Organization and not by the staff member. Such a request falls within WHO’s discretion, and it is intended to assess the medical condition of the staff member concerned to establish whether there is a service-incurred illness and to prevent it from being claimed after the separation from service. No provisions compel the Organization to require a medical examination for a staff member before resignation, to assess whether she or he is capable of tendering resignation (see Staff Rule 1010 concerning resignation). Moreover, in the present case, WHO’s alleged failure to order a medical examination of the complainant may not be regarded as a breach of its duty of care towards him. In the medical certificate dated 1 March 2021, the complainant’s treating psychiatrist stated that the complainant “appear[ed] capable of taking decisions related to his future, as his judgment and critical capacities are intact”, and “consider[ed] useful a definitive detachment from the current workplace, so that [the complainant] can re-invest his professional capacities in other agencies/organizations”. Thus, the Organization could reasonably presume that:

- the complainant tendered his resignation of his own free will and with full legal competence for taking decisions in his own interest; and
- the complainant decided to follow his psychiatrist’s advice that a definitive separation from WHO was appropriate.

The complainant bears the burden of establishing lack of legal competence and has failed to do so. For example, the fact that the complainant, on 17 February 2021, requested the WHO Staff Physician to organize an urgent psychiatric assessment given the level of stress WHO had allegedly placed on him since May 2020, and that he had also submitted a claim for service-incurred illness, is immaterial. These requests were not linked with his resignation and did not compel the Organization to make a psychiatric assessment for the purpose of the acceptance or refusal of his resignation. As to the complainant's mental condition after he resigned, as certified by his psychiatrist in the 5 April 2022 and 15 September 2022 medical certificates, the Tribunal notes that these certificates postdate his resignation and, therefore, they could not be taken into account by WHO at the time of his resignation. In any event, the 5 April 2022 medical certificate refers to facts which occurred after his resignation and which cannot put in doubt the complainant's legal competence at the time he tendered his resignation.

25. In his sixth plea, the complainant alleges that WHO breached its duties of care, good faith, and transparency, including during the internal appeal process. He submits that the GBA erred in stating that WHO "acted with care" towards him and that the complainant "partially contributed to the escalation of the situation". The complainant goes over several episodes which he describes as evidence of WHO's breach of its duty of care, namely:

- (i) deprivation of whistleblower protection;
- (ii) failure to investigate his allegations of misconduct and retaliation;
- (iii) WHO's alleged "false claims that [the complainant] violated his duties", having regard to the content of the WHO press releases concerning the withdrawal of the COVID report; and
- (iv) WHO's alleged failure to conduct a psychiatric examination prior to separating him from service.

In addition, the complainant blames the Organization for the following alleged failures:

- (v) to publicly disassociate itself from Mr G.'s defamatory statements;

- (vi) to notify him, on two occasions, that he had been summoned by the Italian Public Prosecutors; and
- (vii) to sanction Mr G. for having falsely stated publicly that the complainant had been avoiding the summons.

The complainant adds that:

- (viii) the GBA erred in finding that the complainant “partially contributed to the escalation of the situation”, as the facts demonstrate that it was Mr G. who escalated the situation by publicly and repeatedly defaming the complainant, whilst WHO sided with Mr G.’s defamatory allegations and refused to take action against him.

As to the complainant’s first, second, third, and fourth allegations summarized above, the Tribunal has already excluded that there is evidence of unlawful actions or omissions by the Organization in this respect. In addition, the Tribunal notes:

- as to the alleged deprivation of whistleblower protection, even though CRE lawfully stated that the complainant did not need protection under the circumstances, it assisted and advised him and kept monitoring the situation;
- as to the alleged false claim that the complainant violated his duty, there is no such accusation in the WHO press releases; and
- as to the alleged failure to investigate Mr G.’s misconduct, there is evidence in the record that an initial review\* was carried out and finalized and that the Organization agreed to award the complainant 16,000 Swiss francs in moral damages for the length of this process\*.

26. As to the Organization’s alleged failure to “publicly disassociate itself from [Mr G.]’s defamatory statements”, it is not necessarily the duty of an international organization, although it has in principle a duty to protect its staff members when they are exposed to public criticism in relation to their functions, to engage in public press releases in defense of or against them. However, in the circumstances of the case,

---

\* *Recte.*

taking into account the position of Mr G., who was Assistant Director-General, it was the Organization's duty to publicly distance itself from his declarations, which otherwise could be perceived as attributable to the Organization. In this respect, there was a breach of the Organization's duty of care. This does not justify the impugned decision to be set aside. However, this violation of the duty of care entitles the complainant to an award of moral damages. The Tribunal will assess them taking into account the complainant's own contribution to the situation by playing a role in escalating the media pressure. The complainant is entitled to 15,000 Swiss francs in moral damages.

27. The complainant also submits that Mr G. filed a criminal complaint against him while he was still employed by WHO, and that shortly thereafter, Mr G. filed a civil complaint, seeking damages from the complainant and others. The Tribunal considers that WHO cannot be held responsible for the judicial initiatives taken by Mr G. in his personal capacity, including any claims that Mr G. may bring before national courts. The Organization has no authority to prevent staff members from taking legal action in their personal capacity. Additionally, the civil suit against the complainant was filed after Mr G. separated from WHO. In any event, the complainant, who may, in principle, enjoy immunity from criminal and civil jurisdiction for actions taken in his capacity as an international official, has not explained to the Tribunal's satisfaction why he cannot avail himself of immunity in these national litigations and whether he sought the Organization's support for invoking immunity.

As to the Organization's alleged failure to inform the complainant that he had been summoned by the Public Prosecutor of Bergamo, there is no evidence of a failure amounting to a breach of the duty of care. The complainant was summoned three times by the Public Prosecutor of Bergamo:

- (i) the first time he was summoned directly on 28 October 2020 for a hearing to be held on 5 November 2020; and
- (ii) the second and third times he was summoned through diplomatic channels, on 12 November 2020 and on 10 December 2020.

After the first summons, the Organization wrote to the Public Prosecutor of Bergamo and to the Italian Ministry of Foreign Affairs, on 3 November 2020. It took and maintained the position that its staff enjoyed immunity from national criminal jurisdiction, refused to waive such immunity, and requested that any summons of the WHO staff be made via diplomatic channels. The 3 November 2020 communications ensured protection against the risk of the Italian Public Prosecutors issuing a compulsory attendance summons to the complainant. As the second and third summons were made through diplomatic channels, the summons were intended to be made under condition of a waiver of the immunity, and in the absence of a waiver there was no risk of a compulsory attendance summons. In his account of the facts, the complainant emphasizes that during a press conference held on 8 December 2020, the Italian Minister of Foreign Affairs announced that he opposed immunities being used to avoid testimony, specifically referring to the situation of WHO. This factual circumstance is immaterial. It is not the role of national Ministers or other national authorities to waive or oppose or ignore privileges and immunities, insofar as the Member States have signed and ratified international Conventions establishing such privileges and immunities.

As to the failure to sanction Mr G., the Tribunal has already stated that the investigation process against him is outside the scope of the present complaint.

As to the alleged error by the GBA in finding that the complainant contributed to the escalation of the situation, the Tribunal sees no error, in light of the evidence in the record. The Tribunal has already noted that there is evidence that the COVID report was published in the absence of full clearance, at the complainant's initiative, and this contributed to attract media attention and to escalate the situation. There is also evidence that some of the complainant's internal emails were leaked to the press. In its reply, the Organization affirms, without being contradicted by the complainant, that both Mr G. and the complainant spoke with the Italian media, granting interviews and/or making appearances on television, without any authorization from the Organization, and against its explicit request not to release interviews,

and clearly in their personal capacities. The Organization refers to a few interviews released to the media by the complainant whilst he was still employed with WHO. In addition, as evidenced by WHO, the complainant published a book shortly after tendering his resignation in which he provided his version of the events surrounding the publication of the COVID report, made negative remarks about WHO and its staff, and the logo of WHO was printed on the cover of his book. According to WHO, neither the publication of the book nor the use of WHO's logo had been authorized by the Organization. Thus, the complainant contributed to exposing himself to the media.

28. In his sixth plea, the complainant also contends a breach of the Organization's duty of care during the internal appeal process, which was not concluded within the statutory time limit of sixty calendar days from the GBA's opinion. The GBA report was issued on 20 April 2022 and the final decision was adopted on 9 December 2022, that is with a six-month delay. However, the Tribunal notes that time limits of this kind are plainly not intended to have the effect of nullifying a decision taken after their expiry. Non-observance of time limits does not therefore render such decisions unlawful and, where that non-observance is wrongful, it may only entitle the staff members concerned to compensation if it causes injury to them (see, for example, Judgments 4584, consideration 4, 4408, considerations 5 and 6, and 2885, consideration 14). Having regard to the complexity, sensitivity, and the circumstances of the case, the six-month delay was not inordinate, did not amount to a breach of the Organization's duty of care, and does not justify the award of moral damages.

29. There are no bases for the award of damages other than those awarded in consideration 26.

30. As the complaint succeeds in part, the complainant is entitled to costs in the amount of 10,000 Swiss francs.

DECISION

For the above reasons,

1. WHO shall pay the complainant 15,000 Swiss francs in moral damages.
2. It shall also pay the complainant 10,000 Swiss francs in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 2024, Mr Patrick Frydman, President of the Tribunal, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

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



PATRICK FRYDMAN



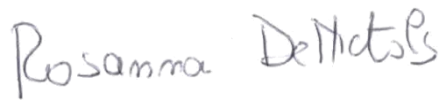
MICHAEL F. MOORE



HUGH A. RAWLINS



CLÉMENT GASCON



ROSANNA DE NICTOLIS



MIRKA DREGER