

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**M.**  
**v.**  
**WHO**

**140th Session**

**Judgment No. 5026**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. O. M. against the World Health Organization (WHO) on 7 July 2023, WHO's reply of 25 October 2023, the complainant's rejoinder of 8 January 2024 and WHO's surrejoinder of 8 April 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 contests WHO's decision to impose on him the disciplinary measure of dismissal for misconduct with one month's notice and the payment of an indemnity, and to include his name in Clear Check, the United Nations (UN) system-wide screening database created to prevent the rehire of perpetrators of sexual harassment.

The complainant, a former WHO staff member, joined the Organization in 2001. At the time of the events giving rise to the present complaint, he was serving as a Medical Officer, at grade P.4, in the Health Security and Emergencies Unit, WHO Regional Office for Africa (AFRO). In April 2017, he was deployed to Jijiga, Ethiopia, as an Epidemiological Team Lead and he was later appointed Incident

Manager under the Cholera/Acute Watery Diarrhoea outbreak operation in the Somali Region of Ethiopia.

In an email of 13 April 2018, Mr H., Head of Office, Office for the Coordination of Humanitarian Affairs (OCHA) in Ethiopia, reported to the United Nations Office of Internal Oversight Services (UN OIOS) “a case of sexual harassment” that had allegedly taken place in April 2017 and involved Ms A., an OCHA staff member, who was at the time temporarily deployed to Jijiga. Mr H. indicated that he was first contacted about the incident by Ms A.’s supervisor in Jijiga, who shared some of the details Ms A. had allegedly reported to him. He then immediately contacted Ms A. who reported that “there had been a social gathering [...] at the hotel where many international humanitarian workers were staying [and] [a]t the end of the evening an international staff member working with [WHO], [the complainant], had tried to physically pull [her] into his hotel room [but] [s]he had managed to pull away and escape”. Mr H. added that, while Ms A. initially asked for advice on the procedure to lodge a formal complaint, she subsequently informed him she did not wish to pursue that avenue.

On 7 May 2018, UN OIOS referred the matter to the WHO Office of Internal Oversight Services (IOS). IOS was able to interview Ms A. in May 2019, namely after several attempts to contact her for an interview. Having been apprised of the alleged incident on 25 July 2019, the WHO Director-General requested that it be investigated by IOS pursuant to paragraph 7.13 of the Policy on the Prevention of Harassment at WHO, as no formal complaint had been filed against the complainant. During the ensuing investigation, IOS also interviewed a number of witnesses, including Ms N., a female humanitarian worker at the time deployed to Jijiga, who had allegedly also experienced unwelcome sexual advances from the complainant. By an email of 24 April 2020, IOS informed the complainant that he was the subject of an investigation into allegations that he had sexually harassed Ms A. in April 2017 and invited him to an interview scheduled for 28 April 2020. Having conducted the complainant’s interview as scheduled, on 3 June 2020, IOS shared with the complainant the transcript of the interview and

invited him to provide his comments thereon, which the complainant did on 8 June 2020.

In its investigation report of 23 March 2021, IOS made the following findings:

- “(a) [The complainant] used force to bring Ms [A.] in his room, one evening, as both of them were alone, and despite Ms [A.’s] protests and resistance. Subsequently, [the complainant] released Ms [A.’s] hand after she ‘loudly’ told him that she did not want to be in his room, and she then left his room and returned to her room.
- (b) In its context, this behaviour could not be interpreted differently than as having a sexual connotation.
- (c) This behaviour caused intense fear and distress to Ms [A.] and affected her work environment as well as her ability to carry out her functions during the rest of her stay in Jijiga.
- (d) In the same period, [the complainant] also made unwelcome sexual advances to another female humanitarian worker, who [did] not wish to file a complaint.
- (e) In both cases, [the complainant] was in a position of superiority, which he abused by targeting more junior humanitarian workers, potentially less likely to both reject his advances and report his behaviour.”

IOS concluded that the complainant had “engaged in behaviour that may be qualified as sexual harassment”, as per the definition provided in paragraph 3.2.1 of the Policy on the Prevention of Harassment at WHO, and recommended that the Regional Director, AFRO, forward the investigation report to the Global Advisory Committee on Harassment (GAC) for its views and then decide on the appropriate course of action.

On 27 April 2021, the Regional Director, AFRO, transmitted the IOS investigation report to the GAC which, following a meeting held on 23 June 2021, submitted its report on 2 July 2021. The GAC agreed with IOS’ conclusion that the complainant had “engaged in behaviour that may be qualified as sexual harassment” and even proposed to use stronger wording in the conclusion by replacing the phrase “may be

qualified as sexual harassment” with “is qualified as sexual harassment”. Emphasising that WHO ought to be consistent with its commitment to zero tolerance to sexual harassment, the GAC recommended the initiation of disciplinary proceedings. The GAC noted the length of time taken to conduct the investigation and recommended raising awareness regarding sexual harassment, in particular the obligation to report and the importance of a victim-centered approach.

Due to the complainant’s transfer to WHO Headquarters effective 1 May 2021, the GAC report was handed over to the Director, Human Resources and Talent Management (HRT), who, by a letter of 31 August 2021, entitled “Notification of charges of misconduct”, informed the complainant that the following charges had been levelled against him:

- (a) Engaging in sexual harassment of two female humanitarian workers, as defined in section 3.2.1 of the Policy on the Prevention of Harassment at WHO;
- (b) Failing to observe paragraph 23 of the WHO Code of Ethics and Professional Conduct, which prohibits disrespectful behaviour;
- (c) Abusing his position’s influence and authority to sexually harass two more junior humanitarian workers which amounts to abuse of authority, as set out in section 26 of the WHO Code of Ethics and Professional Conduct;
- (d) Failing in his obligation, as a WHO representative and manager, to act as a role model by maintaining a high standard of personal conduct, treating colleagues with courtesy and respect, and promoting a harmonious work environment free from harassment, as envisaged in section 4.4 of the Policy on the Prevention of Harassment at WHO;
- (e) Failing to observe the standards of conduct for the international civil service, set out in article 1.1 of the WHO Staff Regulations and paragraphs 21 and 22 of the Standards of Conduct for the International Civil Service.

The Director, HRT, further informed the complainant that, if proven, the charges could lead to the imposition of one or more disciplinary measures resulting in his separation, the inclusion of a note regarding

his actions in his human resources file banning him from any future employment with WHO, and the inclusion of his name in Clear Check, the UN system-wide screening database created to prevent the rehire of perpetrators of sexual harassment. Lastly, the Director, HRT, invited the complainant to respond to the charges in writing, further to which the Administration would take a decision. The complainant was placed on administrative leave with pay for one month pending the determination of his case. On 30 September 2021, he provided his written response on the charges, denying Ms A.'s account of events and asserting that the IOS and the GAC reports contained manifest incorrect conclusions and that the charges were not proven beyond a reasonable doubt.

By a letter of 28 October 2021, the Director-General notified the complainant of his decision to impose on him the disciplinary measure of dismissal with one month's notice and the payment of an indemnity pursuant to Staff Rules 1075.1 and 1110.1.6. According to the Director-General, dismissal was the appropriate and proportionate disciplinary measure given that a final determination of sexual harassment on the complainant's part had been made. The Director-General further notified the complainant of his decision to include his name and information in Clear Check, the UN system-wide screening database. On 10 December 2021, the complainant filed an appeal requesting the quashing of the 28 October 2021 decision, the removal of his name from Clear Check, reinstatement or, alternatively payment of three years' salary and benefits, 10,000 United States dollars in moral damages and 20,000 dollars in costs.

In its report of 30 August 2022, the WHO Global Board of Appeal (GBA) concluded that the complainant's actions, which amounted to misconduct, had been established beyond a reasonable doubt, hence the contested decision was lawful, and reinstatement was not warranted. However, the GBA considered that the delay in the initiation of the investigation constituted a procedural flaw which run contrary to the Policy on the Prevention of Harassment at WHO and constituted a violation of WHO's duty of care. Emphasising the undeniable difficulty involved in preparing a defence against misconduct allegations dating more than two years back, the GBA considered that the delay had caused

the complainant significant stress which warranted compensation. It thus recommended allowing the appeal in part and awarding the complainant moral damages in the amount of 6,000 United States dollars and legal costs up to a maximum of 2,000 dollars.

By a letter of 12 April 2023, the Director-General informed the complainant that he had decided to reject his appeal in its entirety. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order that his name be removed from Clear Check. He also asks the Tribunal to order his reinstatement in WHO or, alternatively, to award him at least three years' salary and benefits, including contributions to the UN Joint Staff Pension Fund. He claims at least 50,000 United States dollars in moral damages for WHO's delay in conducting the investigation and issuing the impugned decision, its blatant violation of his right to be heard, and the damage to his reputation. He also claims 30,000 United States dollars in costs.

WHO asks the Tribunal to dismiss the complaint in its entirety.

#### CONSIDERATIONS

1. The complainant was a long-serving staff member of WHO holding a continuing appointment at the material time. In April 2020, he was notified, for the first time, that he was being investigated regarding an incident that allegedly took place in April 2017, three years earlier, during an emergency response mission. According to WHO, the complainant had engaged in sexual harassment by forcefully grabbing a woman and dragging her into his hotel room, against her will, while on mission. By his complaint of 7 July 2023, he impugns before the Tribunal the decision of the Director-General of 12 April 2023 rejecting, in its entirety, his appeal of 10 December 2021 against the decision of 28 October 2021 to impose upon him the disciplinary measure of dismissal based on a finding of sexual harassment.

2. In the impugned decision, the Director-General agreed with the recommendation of the GBA to reject the complainant's appeal regarding the merits of the case, given that the facts upon which the dismissal decision was based were established beyond a reasonable doubt, that they amounted to misconduct, that no relevant facts were overlooked and that the process was not tainted by bias.

The Director-General however disagreed with the recommendation of the GBA to nevertheless allow the appeal in part because the delay in the initiation and the conduct of the relevant investigation amounted to a procedural defect which warranted awarding the complainant moral damages in the amount of 6,000 United States dollars, plus the reimbursement of legal fees up to a maximum of 2,000 United States dollars.

In their respective decision and report, both the Director-General and the GBA referred to the prior investigation report of the WHO IOS of 23 March 2021 and to the subsequent report of the GAC of 2 July 2021, which had said that the complainant's behaviour could be, for IOS, and was, for the GAC, sexual harassment.

3. Before the Tribunal, the complainant raises essentially three arguments. First, he maintains that the GBA and the Director-General misunderstood their role and failed to conduct an independent evaluation of the facts. Second, he claims that the applicable burden of proof beyond a reasonable doubt was not met since the victim's recollection of the alleged behaviour of the complainant was implausible, that it was met by a complete denial of the alleged behaviour by the complainant, and that there was no direct corroborating evidence of any sort. He adds that WHO, be it at the investigation stage or during the internal appeal process, did not even try to look for the exculpatory evidence that he had pointed to. Third, he considers that the undue delay in pursuing the matter strongly prejudiced the integrity of the investigation and violated his due process rights.

4. In relation to the Tribunal's role in matters pertaining to disciplinary measures, it is convenient to recall its statement in Judgment 4362, consideration 7, reiterated in Judgments 4942, consideration 6, and 4749, consideration 5, to the effect that:

"The role of the Tribunal in a case such as the present is not to assess the evidence itself and determine whether the charge of misconduct has been established beyond reasonable doubt but rather to assess whether there was evidence available to the relevant decision-maker to reach that conclusion (see, for example, Judgment 3863, consideration 11). Part of the Tribunal's role is to assess whether the decision-maker properly applied the standard when evaluating the evidence (see Judgment 3863, consideration 8)."

In addition, it is worth recalling that in Judgment 4579, consideration 4, the Tribunal emphasized that "[it] shall not interfere with the findings of an investigative body in disciplinary proceedings unless there was a manifest error (see Judgments 4444, consideration 5, and 4065, consideration 5)" (see also Judgments 4770, consideration 12, and 4745, consideration 5).

5. With respect to the burden of proof applicable in disciplinary proceedings, the Tribunal recalls that in Judgment 4749, consideration 5, it observed that "the burden of proof rests on an organisation to prove the allegations of misconduct beyond reasonable doubt before a disciplinary sanction can be imposed". And, in Judgment 4362 again, considerations 8 and 10, it relevantly stated the following:

"8. The standard of proof of beyond reasonable doubt does not exist to create an insuperable barrier for organisations to successfully prosecute disciplinary proceedings against staff members. Indeed it should not have that effect. What is required is discussed in many judgments of the Tribunal. Rather the standard involves the recognition that often disciplinary proceedings can have severe consequences for the affected staff member, including dismissal and potentially serious adverse consequences on the reputation of the staff member and her or his career as an international civil servant, and in these circumstances it is appropriate to require a high level of satisfaction on the part of the organisation that the disciplinary measure is justified because the misconduct has been proved. The likelihood of misconduct having occurred is insufficient and does not afford appropriate protection to international civil servants. It is fundamentally unproductive to say, critically, this standard is the 'criminal' standard in some domestic legal systems and a more appropriate standard is the 'civil' standard in the same

systems involving the assessment of evidence and proof on the balance of probabilities. The standard of beyond reasonable doubt derived from the Tribunal's case law as it has evolved over the decades, serves a purpose peculiar to the law of the international civil service.

[...]

10. [...] The standard of beyond reasonable doubt concerns both the finding of specific facts and the overall level of satisfaction that the case against the staff member has been made out. In relation to the proof of any essential relevant fact, the person or body charged with the task of assessing the evidence and making a decision in the context of determining disciplinary proceedings must be satisfied beyond reasonable doubt that a particular fact exists.”

6. Finally, in respect of harassment matters such as the instant case, firm and constant precedent of the Tribunal states that the question as to whether harassment occurred must be determined in the light of a careful examination of all the objective circumstances surrounding the acts or events complained of (see, for example, Judgments 4961, consideration 6, 4900, consideration 18, 4471, consideration 18, and 4241, consideration 9).

7. Regarding the first plea of the complainant, the Tribunal observes that in its report, the GBA wrote particularly the following:

“34. The Panel took note of [the Tribunal]’s jurisprudence on the scope of review of disciplinary decisions stating that *‘it is not the Tribunal’s role to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. For that reason such a body is entitled to considerable deference. So that where in the present case the Investigation Panel has heard evidence and made findings of fact based on its appreciation of that evidence and the correct application of the relevant rules and case law, the Tribunal will only interfere in the case of manifest error’* (Judgment 3593, consideration 12; see also Judgment 2295, consideration 10).

35. The Panel further noted [the Tribunal]’s jurisprudence on the burden of proof establishing that *‘the burden of proof rests on an organization to prove the allegations of misconduct beyond a reasonable doubt before a disciplinary sanction is imposed. It is equally well settled that the Tribunal will not engage in a determination as to whether the burden of proof has been met, instead, the Tribunal will review the evidence to determine*

*whether a finding of guilt beyond a reasonable doubt could properly have been made'* (Judgment 3882, consideration 14; see also Judgment 3649, consideration 14; Judgment 2699, consideration 9).

[...]

62. The Panel recalled in this respect [the Tribunal]'s jurisprudence requiring the Panel not to reweigh the evidence before the investigative body which *'had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. For that reason such a body is entitled to considerable deference. So that where [an investigative body] has heard evidence and made findings of fact based on its appreciation of that evidence and the correct application of the relevant rules and case law, the Tribunal will only interfere in the case of manifest error'* (Judgment 4207, consideration 10).

63. In light of this jurisprudence and the review of the evidence, the Panel is satisfied that the Organization would not have reached a different conclusion even if the Complainant's report had been acted upon promptly." (Italicised in the original.)

8. Yet, on this precise issue, in Judgment 5003, consideration 5, in a matter also involving WHO, the Tribunal recalled that the GBA misconceived its role by quoting, as it did in the present case, the above-mentioned jurisprudence of the Tribunal on the latter's role to explain an internal body's role concerning the analysis of the relevant evidence:

"The GBA, in turn, misconceived its role as, in its 25 October 2021 recommendations, it refused to reweigh the evidence and to assess the facts. It stated:

'According to [...] Judgment 3593, consideration 12, it is not the role of an appellate body to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said. Owing deference to the investigative body, the appellate body should only interfere in the case of manifest error. The Panel was satisfied that the IOS [r]eport discussed, under each incident, all the evidence received and found, including the [complainant]'s answers to the investigator's questions. The Panel was of the view that an on-site visit by IOS might have been advisable.'

The Tribunal's precedent quoted by the GBA concerns the role of the Tribunal, not the role of the internal appeal bodies. On the contrary, with regard to the role of the internal appeal bodies, the Tribunal has consistently held that an appeal body is wrong, when defining its own competence, to rely on the Tribunal's case law concerning its limited power of review.

Internal appeal bodies are not administrative courts whose sole responsibility in principle is to review the lawfulness of decisions which are challenged (see, for example, Judgments 3161, consideration 5, and 3077, consideration 3). Indeed, ordinarily, the task of the internal appeal bodies is to determine whether the decision under appeal is the correct decision or whether, based on the facts, some other decision should be made (see Judgment 3161, consideration 6). The power of internal appeal bodies extends to the overall re-examination of all matters submitted to them and is not subject to the same restrictions that might apply to the judicial review by the Tribunal. The only exception to this is if the rules governing the review body provide for such restrictions (see Judgment 3318, consideration 5). The internal appeal bodies play a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from their composition, their extensive knowledge of the functioning of the organisation, and the broad investigative powers granted to them. By conducting hearings and investigative measures, they gather the evidence and testimonies that are necessary to establish the facts, as well as the data needed for an informed assessment thereof (see Judgment 3423, consideration 12).”

In Judgment 5003, this was found sufficient to entail the annulment of the impugned decision of the Director-General that ended up relying on the GBA report.

9. The Tribunal considers that the same applies in the present case. The GBA committed a similar error of law and analysed the relevant and contradictory evidence through this distorted understanding of its role.

In this regard, the Tribunal does not accept WHO’s argument to the effect that, in reality, regardless of the above-mentioned observations made in the GBA report on the scope of review in disciplinary decisions, it remains that the latter conducted in essence a comprehensive analysis of the facts and reviewed the totality of the evidence gathered to satisfy itself that it was sufficient to support a finding beyond reasonable doubt on the charge of sexual harassment.

This explanation offered by WHO in its pleadings is clearly at odds with the above-cited wording found twice in the GBA report, first in the “Regulatory framework” section that preceded its analysis of the investigation evidence, and, second, at the very end of the “Investigation” section. This wording is indicative of an improper approach to the

consideration of the relevant evidence, and, in the Tribunal's view, it has no doubt tainted the way in which the GBA elected to assess and consider this evidence.

The complainant's first plea is therefore well founded and this justifies setting aside the impugned decision which endorsed the GBA report.

10. The second plea of the complainant concerns the alleged insufficiency of the evidence relied upon by WHO to conclude that the alleged sexual harassment had been proven beyond a reasonable doubt.

In this regard, he first emphasizes that notwithstanding the discrepancies between the evidence offered by him and the victim of the alleged harassment on key factual aspects, IOS did not interview this person a second time to try to clarify and resolve these discrepancies, determine the truth and properly establish the facts (see, for example, on this issue, Judgment 4241, consideration 12). He adds that this was essential to do in the present case considering that, according to the witnesses interviewed by IOS after its initial interview with the alleged victim, she apparently gave different accounts regarding, particularly, whether she and the complainant were together at a dinner outside their hotel or at a social gathering at their hotel prior to the litigious incident, whether this incident occurred after a dinner or after having had drinks, whether his or her room was involved, and whether she was allegedly beckoned or pulled.

Second, the complainant maintains that despite his categorical denial of the alleged incident and the many issues that he raised in his interview and afterwards, neither IOS, the GAC, the GBA, or the Director-General pursued any inquiries to even try to identify other witnesses who were present at the time of the alleged event and who could have provided relevant evidence that could have impacted the outcome of the case, such as the female colleague who, according to the alleged victim, accompanied the complainant and her back to the hotel prior to the incident, security officers or hotel receptionists who could have remembered the incident, and other hotel staff members or international civil servants then staying at the hotel. Similarly, he maintains that IOS

failed to try to obtain relevant material evidence such as security footage or recordings of the hotel lobby area on the day of the incident.

11. While it is not for the Tribunal to reassess the evidence, it nonetheless can assess whether the investigative bodies committed a manifest error in investigating conduct giving rise to disciplinary proceedings. In this respect, in Judgment 5003, consideration 5, the Tribunal observed that “[b]efore disciplinary proceedings are undertaken, the investigator has the duty to ascertain all relevant facts and the accused person must be given the benefit of the doubt (see, for example, Judgments 4697, consideration 22, 4491, consideration 19, and 4011, consideration 9). This implies that the investigator has to assess not only evidence against the accused person, but also exculpatory evidence (see Judgments 4456, considerations 9 and 17, and 4362, consideration 12), and, before this, must allow the accused person to provide exculpatory evidence.”

12. The Tribunal recognizes that in matters of sexual harassment, the mere fact that there was no independent witness present during the incident is not uncommon and does not *per se* undermine the credibility of the alleged victim’s account of the event. Yet, it remains that, in the instant case, the issues raised by the complainant went much further than merely raising that there were contradictory accounts offered.

On the one hand, the complainant pointed to specific discrepancies in the factual recollection of witnesses, in a context where the alleged victim could not identify an exact date for the alleged incident and where all the interviews were conducted well over two years after the occurrence of the alleged incident that he categorically denied. On the other hand, he pointed to specific witnesses who should be potentially identified and contacted, as well as to material evidence that should at least be looked into.

13. The Tribunal considers it unacceptable for IOS not to have taken any steps to try to identify the female colleague who, according to the victim, accompanied her and the complainant back to the hotel, or to assess whether there were records of who was present at the hotel

of only 20 rooms in April 2017, such as a security officer, a receptionist or other staff members who could have provided valuable information regarding the incident reported by the alleged victim. These were easy and basic steps to take for any reasonable investigative body looking to conduct a rigorous and thorough inquiry of the event.

Even if these additional inquiries may not have led to anything more, it was clearly insufficient for IOS not to pursue additional inquiries in the direction indicated above. By failing to even try to do so, the Tribunal finds that IOS committed a manifest error that irrevocably tainted the legitimacy and completeness of its investigation, to the obvious detriment of the complainant.

Given this manifest error, it is not necessary to address the point concerning whether the alleged victim should have been interviewed a second time.

14. In its submissions, WHO maintained that all reasonable avenues of inquiry were pursued by IOS having regard to the distinct difficulties presented by the delayed initiation of the investigation. It emphasised in particular that IOS was not obliged to undertake “fishing expeditions on a fanciful or speculative basis”.

But this was clearly not the situation in the instant case. The additional inquiries that the complainant pointed to and that were not pursued by IOS were far from being “fishing expeditions”. They were on the contrary essential verifications directed towards specific facts, witnesses and material evidence, and a reasonable investigator, faced with the contradictory recollection of the alleged incident by the persons involved, would have indeed pursued these inquiries to properly determine the truth. This was even more required in a context where, like here, the investigation was being made not because of the alleged victim’s complaint but following the decision of the Organization to itself launch an inquiry into the event pursuant to paragraph 7.13 of the Policy on the Prevention of Harassment at WHO.

15. The Tribunal does not accept WHO's suggestion that it somehow suffices to note that the complainant was not prevented from providing exculpatory evidence during the investigation or from exercising his right to be heard.

On this point, WHO's argument that the complainant was informed by the investigator, before his interview and again at the end of it, that he could submit additional evidence or documents, and that such would be duly considered, is non-responsive and quite unsatisfactory. To suggest that the complainant could have provided exculpatory evidence is indeed a misunderstanding of the burden of proof applicable in disciplinary proceedings, as it would indirectly impose upon him a burden of establishing his innocence. In disciplinary proceedings, the burden of proving misconduct beyond a reasonable doubt always rests on the shoulders of the international organisation and never, at any point in time in the process, does it shift upon a complainant.

Put differently, the complainant did not have any burden of providing exculpatory evidence. It was rather for WHO to establish that it had conducted a rigorous and thorough investigation, with no stone left unturned.

16. Similarly, the fact that the complainant submitted additional evidence following the conclusion of his interview, including attestations related to his performance on the mission, his satisfactory long service, and his previous work, which were taken into consideration in the investigation, does not alleviate in any way the consequences of the absence of the additional inquiries that the issues raised by the complainant definitely required.

The complainant's second plea is also well founded.

17. In his third plea, the complainant contends that the inordinate and excessive delay before initiating the investigation process violated his due process rights.

In the instant case, the record indicates that the alleged incident was reported to IOS more than 12 months after it was said to have occurred, the IOS investigation was initiated more than 24 months after the

incident, the complainant was first notified of the situation and interviewed 36 months after the incident, and the IOS report was completed close to 48 months after the incident was said to have occurred.

18. Regarding the timing of the investigation, the GAC expressed grave concerns about the delay between the alleged facts being reported to IOS on 7 May 2018 and the initiation of the IOS investigation in May 2019 and the issuance of its report in March 2021. The GAC noted that a “zero tolerance” policy required in return a mechanism that was fully efficient and functional and opined that the treatment of sexual harassment cases should be completed within 6 to 12 months maximum.

The GBA also found that the delay in the initiation of the investigation constituted a procedural defect. It recognized that such a significant delay in the commencement of the investigation rendered the establishment of the facts more difficult. And while not sufficiently grave, in its view, to result in the overturning of the contested decision, it still found that this delay ran contrary to the Policy on the Prevention of Harassment at WHO, which required the Organization to act as soon as possible, and constituted a violation of WHO’s duty of care. It observed that this procedural flaw must have indeed caused the complainant significant distress for which he ought to be compensated.

The Director-General nevertheless decided to dismiss the appeal in its totality and reject all requests for redress, taking into consideration the findings and conclusions of the GBA, including the determination that the robustness of the decision-making was not affected by the delay in the initiation of the investigation, and bearing in mind WHO’s commitment to zero tolerance for sexual harassment. The executive head of the Organization did not elaborate, however, on the reasons why he considered that there was no violation of WHO’s duty of care, as found by the GBA and alluded to by the GAC, nor as to why the complainant was not entitled to any compensation in this regard.

19. The Tribunal considers that in the instant case, WHO clearly took an excessive and unreasonable amount of time to initiate, perform and conclude the investigation, in violation of its own statutory requirements and in disregard of its general duty not to cause its staff members undue hardship.

This excessive delay was much more than a mere procedural flaw under the circumstances. It adversely impacted the complainant's right to a full answer and defence, and it prejudiced the integrity of the investigation. Most of the evidence was difficult to obtain as a result, and the record indicates that it indeed led IOS to eventually give up on collecting it. By the time he was informed of the investigation, some three years after the alleged incident, it was too late for the complainant to find additional evidence or identify other potential witnesses. This ended up breaching the complainant's right to due process.

The complainant's third plea is well founded too.

20. It follows from the foregoing that the Director-General's impugned decision of 12 April 2023 and his previous decision of 28 October 2021, which relied respectively on a GBA report and an IOS report that were both tainted with serious irregularities, must be annulled and set aside. As a result, the name of the complainant must be removed from the UN Clear Check screening database.

Normally, the matter should be remitted to WHO for IOS to properly complete its investigation and for the GBA afterwards to determine the matter through an overall examination of the facts. But given the passage of time, it is not realistic to consider that this can still be done efficiently. This impossibility should not however prejudice the complainant. Any reasonable doubt that arises from such should rather benefit him.

21. The complainant seeks reinstatement, or alternatively, an award of at least three years' salary and benefits. As a rule, an official holding a continuing appointment whose disciplinary dismissal is set aside, is entitled to be reinstated. However, the Tribunal may refuse to make such an order if reinstatement is no longer possible or if it is

inappropriate. According to the Tribunal's case law, reinstatement is inadvisable when an employer is likely to have lost confidence in an employee (see, for example, Judgment 4310, consideration 13).

There is little room to doubt that in the instant case, given the high sensitivity of the issue at stake, the relationship between the complainant and WHO has broken down and it would not be advisable to order his reinstatement (see, for example, Judgments 4674, consideration 23, 4456, consideration 18, 4310, consideration 13, and 3364, consideration 27).

In the circumstances, the Tribunal considers that the material damages suffered by the complainant will be fairly redressed by awarding him a sum equivalent to one year's remuneration, which shall be calculated on the basis of the net salary and allowances of any kind which the complainant was receiving at the time of his dismissal from WHO, without deducting from this sum any earnings which he may have received since then. As this lump sum must be regarded as compensating the entire material injury suffered by the complainant, there is no need to consider adding to it the amount of the pension contributions relating to the remuneration in question or to pay interest for late payment thereon.

22. As regards moral damages, the complainant asks for a compensation of at least 50,000 United States dollars for the tardiness of the investigation, the blatant violation of his right to be heard, the tardiness of the impugned decision and the damage to his reputation. In this case, given that the moral injury occasioned by a wrongful dismissal pursuant to a finding of sexual harassment is tolerably clear, as is the Organization's breach of its duty of care, the Tribunal considers that the complainant's moral damages will be fairly redressed by ordering WHO to pay him compensation in the amount of 20,000 United States dollars.

23. Regarding costs, the Tribunal finds that the entitlement of the complainant should be fixed at an amount of 10,000 United States dollars.

DECISION

For the above reasons,

1. The impugned decision of the Director-General of 12 April 2023 and his previous decision of 28 October 2021 are annulled.
2. WHO shall withdraw the placement of the complainant's record from the United Nations Clear Check screening database.
3. WHO shall pay the complainant material damages as indicated in consideration 21 of this judgment.
4. It shall also pay the complainant moral damages in the sum of 20,000 United States dollars.
5. It shall pay him costs in the sum of 10,000 United States dollars.
6. All other claims are dismissed.

In witness of this judgment, adopted on 19 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.