H. (No. 7)

v.

ITU

141st Session **Judgment No. 5119**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr K. H. against the International Telecommunication Union (ITU) on 6 February 2023 and corrected on 9 March 2023, ITU's reply of 22 May 2023, the complainant's rejoinder of 24 August 2023, ITU's surrejoinder of 5 October 2023, the complainant's additional submissions of 16 January 2024 and ITU's final comments thereon of 1 February 2024;

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

Having examined the written submissions;

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

The complainant contests ITU's decision to impose on him the disciplinary measure of dismissal with immediate effect.

Additional facts relevant to this case can be found in Judgments 4515 and 4516 on the complainant's first and second complaints, delivered on 6 July 2022, as well as in Judgment 4578 on the complainant's fifth complaint, delivered on 28 November 2022, and in Judgments 4831 and 5094 (application for review) on the complainant's third complaint, delivered on 8 July 2024 and 3 July 2025, respectively.

The complainant, a former staff member of ITU, joined the organization on 1 December 2014 on a two-year fixed-term contract, at grade D.1. It was extended twice for the same duration of two years, and after 30 November 2020, renewed monthly up to the date of the complainant's dismissal on 3 March 2022.

On 3 October 2019, a female staff member (referred to as "Complainant 1" for the purposes of the investigation) lodged a complaint with the Ethics Office against the complainant alleging he had sexually harassed her on two occasions. She stated that the first incident occurred towards the end of 2015, and the second took place in July 2019.

On 4 October 2019, another female staff member (referred to as "Complainant 2" for the purposes of the investigation) lodged a complaint with the Ethics Office against the complainant alleging that he had sexually harassed her in the summer of 2017.

On 7 October 2019, the Secretary-General instructed to conduct a formal investigation into these allegations under Service Order No. 19/08 entitled "ITU Policy on Harassment and Abuse of Authority" (Policy on Harassment and Abuse of Authority or Service Order No. 19/08). The investigation was entrusted to an external investigator.

On 14 October 2019, the complainant was informed of the Secretary-General's decision to suspend him from duty with full pay effective from the same date, until further notice, on the grounds that "allegations of misconduct, including sexual harassment and improper behaviour ha[d] been reported to the ITU Ethics Office against [him]" and that a formal investigation would be undertaken.

The investigation formally started in late October 2019. During the investigation, a third female staff member (referred to as "Complainant 3" for the purposes of the investigation) lodged a complaint against the complainant alleging abuse of power and harassment. This third complaint was also examined by the investigator.

As the complainant was found by his doctor to be medically unfit to participate in an interview with the investigator, he was eventually heard by the investigator almost one year later, in September 2020.

Meanwhile, the complainant challenged several administrative decisions pertaining to different issues. First, he inquired about his contractual status and asked that his appointment be converted into a continuing one, which was rejected. The complainant appealed against that decision. The dismissal of that appeal is the subject of the complainant's fourth complaint before the Tribunal, which is currently pending. Second, on 7 July 2020, the complainant submitted a claim for service-incurred illness, citing the events of 14 October 2019 and the exacerbation of his medical situation over the course of 2020. This claim was rejected in December 2020. He appealed against that decision. The dismissal of that appeal is the subject of his third complaint before the Tribunal, which was addressed in Judgment 4831. Third, the complainant also submitted, on 11 September 2020, a complaint alleging harassment by various ITU staff members, particularly his supervisor, as well as institutional harassment. He was informed, in November 2020, that the Secretary-General had decided that the matter would not be investigated and thus would be closed. The complainant appealed against that decision. The dismissal of that appeal is the subject of his second complaint before the Tribunal, which was addressed in Judgment 4516.

From 14 to 18 September 2020, the complainant attended several written interviews sessions with the investigator, in the presence of the Head, Internal Audit Unit and the complainant's legal counsel. During her investigation, the investigator also conducted interviews with numerous witnesses.

On 19 October 2020, the investigator sent a pre-final version of the investigation report to the complainant for comments. Simultaneously, the Secretary-General requested the investigator to provide him with an interim report on the status of the investigation, which she did on 3 November 2020, using the same format as the pre-final version of the report, but deleting her conclusions so as to provide only the descriptive and analytical part of the investigation. On 13 November 2020, having reviewed the interim report, the Secretary-General considered that there was significant evidence supporting the seriousness and credibility of the allegations against the complainant and decided to reconsider the

provisional measure in place and to suspend the complainant from duty without pay until further notice. On the following day, the complainant – who had not yet commented on the pre-final version of the investigation report – requested that such decision, which he considered as amounting to constructive dismissal, be annulled. The Secretary-General decided to maintain his decision. The complainant appealed against that decision. The dismissal of that appeal is the subject of the complainant's first complaint before the Tribunal, which was addressed in Judgment 4515.

On 30 November 2020, the complainant's fixed-term appointment expired. Thereafter, as the investigation was ongoing, it was extended on a monthly basis. The complainant lodged a request for reconsideration contesting his contract's extensions, which was rejected by the Secretary-General. The complainant appealed against that decision. The dismissal of that appeal is the subject of the complainant's sixth complaint before the Tribunal, which is currently pending.

The complainant submitted his comments on the pre-final version of the investigation report on 14 December 2020. The investigator rendered her final report on 18 February 2021 and transmitted it to the complainant for his comments. In her final report, the investigator concluded the following:

> "a. Complainant 1: The two allegations of sexual harassment in 2015 and 2019 occurred as alleged.
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> b. Complainant 2: The allegations that the [complainant] sexually harassed her in the summer of July 2017 occurred as alleged.
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> c. Inappropriate behaviour towards ITU female colleagues: Nine women made statements outlining behaviour by the [complainant] that made them feel uncomfortable.
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> d. Complainant 3: Of the 12 allegations of harassment or abuse of power against the [complainant], 5 were substantiated."

The investigator recommended that "appropriate sanctions be considered against the [complainant] under the ITU [Staff Regulations and Staff Rules]" and considered that "in the case of Complainant 2 particularly, the [complainant]'s behaviour constituted 'serious misconduct'".

On 30 March 2021, the complainant submitted a new formal complaint alleging harassment and abuse of authority by the Secretary-General. He was subsequently informed that the Deputy Secretary-General had decided that no investigation would be undertaken and that the case was closed. The complainant appealed against that decision. The dismissal of that appeal is the subject of the complainant's fifth complaint before the Tribunal, which was addressed in Judgment 4578.

On 31 March 2021, the complainant submitted his comments on the final investigation report.

On 2 June 2021, he was notified of the decision to initiate disciplinary proceedings and was informed, in detail, of the charges brought against him, as follows:

> "- With respect to the allegations brought by [Complainant 1]:
>
> 1. The incident of end 2015 concerning [her] in the lift of the ITU Tower Building is substantiated and amounts to sexual harassment under Service Order [No. 19/08].
> 2. The incident in Vanuatu on 11 July 2019 is substantiated and amounts to sexual harassment under [Service Order No.] 19/08.
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> - With respect to the allegations brought by [Complainant 2]:
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> 3. By his conduct, consisting in blowing kisses and making heart-shaped signs to [her] over a period of approximately a year preceding the incident of summer 2017, as established based on the available evidence, [the complainant] failed to uphold the highest standards of conduct towards [Complainant 2].
> 4. The incident occurred in [Complainant 2]'s office in summer 2017 is substantiated and amounts to sexual harassment under [Service Order No.] 19/08.
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> - With respect to the allegations made during the investigation by nine female staff members of various departments/bureaus:
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> 5. By his conduct towards nine female colleagues, which have been established to fall below what is acceptable in the workplace and expected from ITU staff, [the complainant] failed to uphold the highest standards of conduct towards the aforementioned staff members.
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> - With respect to the allegations brought by [Complainant 3]:
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> 6. By a) interrupting the meeting between the Regional Representatives and [Complainant 3] and treating her in a humiliating and embarrassing manner (allegation 1), b) speaking to her outside the ITU Tower building in an aggressive and belittling manner (allegation 2),

> c) making her feel threatened with not having his contract renewed (allegation 3), and d) raising his voice/talking harshly on occasion at her (allegation 4), as established based the available evidence, [the complainant] abused his authority and position as a manager, as defined in [paragraph] 5 of [Service Order No.] 19/08 and in breach of [paragraph] 22 of [Service Order No.] 17/07, and failed to 'ensure a harmonious workplace based on mutual respect', in violation of [paragraph] 16 of [Service Order No.] 17/07."

The complainant submitted his comments thereon on 16 July 2021.

The case was subsequently referred to the Disciplinary Chamber of the Joint Advisory Committee (JAC). Upon being informed of the composition of the Chamber, the complainant raised concerns, on 21 June 2021, regarding a potential conflict of interest, noting that one of the three alleged victims in the matter was serving as the Chair of the JAC. He also expressed concerns that, in view of the harassment complaint he had lodged against the Secretary-General, there existed a conflict of interest on the part of the JAC, considering that three out of the five members of the Committee had been appointed by him.

On 24 November 2021, the Disciplinary Chamber shared with the complainant documentation regarding his case file and invited him to file closing submissions, which he did on 19 January 2022.

The Disciplinary Chamber issued its report on 3 March 2022. At the outset, it dismissed the complainant's allegations of conflict of interest, considering that the Chair of the JAC was not part of the Disciplinary Chamber and highlighting that she was not informed of the submission of the complainant's case to the Chamber, as all communications in that respect had been transmitted through the Vice-Chair of the JAC. The Disciplinary Chamber also dismissed the allegations of conflict of interest regarding the Secretary-General's role, considering, in essence, that it was not him but the JAC itself that decided which members took part in a disciplinary chamber. The Disciplinary Chamber found that the allegations brought by Complainants 1 and 3 were proven beyond a reasonable doubt, with the exception of allegations 2 and 3 from Complainant 3. It considered that all the allegations brought by Complainant 2 were founded and concluded that the charge pertaining to the allegations made during the

investigation by nine female staff members was proven beyond a reasonable doubt. The Disciplinary Chamber therefore recommended to impose the sanction of dismissal upon the complainant.

On that same day, the Secretary-General informed the complainant that, in light of the report of the Disciplinary Chamber, he considered proven that the complainant had:

> "a. Engaged in sexual harassment, on several occasions, including one instance involving acts of an extremely serious nature against [one of the complainants].
>
> b. Displayed recurrently and over many years inappropriate behaviour towards several female colleagues, thereby failing to uphold the standards of conduct that any ITU staff member should observe.
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> c. Engaged in abuse of authority with respect to [Complainant 3], and failed, as a manager, to ensure a harmonious workplace for [his] staff."

The Secretary-General highlighted that "[t]he foregoing involve[d] particularly grave misconduct", noting that ITU had a zero-tolerance policy against sexual harassment and abuse of authority. He therefore notified the complainant of his decision, endorsing the Disciplinary Chamber's recommendation, to dismiss him with immediate effect.

The complainant filed an appeal against the Secretary-General's decision on 2 May 2022. The Appeal Board issued its report on 7 November 2022, recommending "to dismiss all the [complainant]'s requests". It further issued a number of recommendations of a general nature intended to guide future administrative practice.

On 9 November 2022, the Secretary-General informed the complainant of his decision, endorsing the Appeal Board's recommendation, to dismiss his appeal in its entirety. This is the impugned decision.

The complainant requests the Tribunal to find that the impugned decision is unlawful and to quash it with "full retroactive effect and all other legal effects flowing therefrom". He asks the Tribunal to order his reinstatement to his former position with full retroactive effect to 3 March 2022. The complainant also requests the Tribunal to order payment of all salary, benefits, step increases, pension contributions, entitlements and all other emoluments he would have received from the

date of his dismissal, through the date of his reinstatement. In the alternative, in the event the judgment concerning this complaint is adopted after the date he reached his statutory date of retirement (on 30 September 2025), he asks that he be paid all salary, benefits, step increases, pension contributions, entitlements and all other emoluments he would have received from the date of his dismissal, through the date of his statutory retirement. The complainant also claims moral and exemplary damages in the sum of 250,000 Swiss francs. Lastly, he seeks an award of other relief which is necessary, just and fair, legal fees incurred at the investigation, disciplinary procedure and internal appeal stages, costs and interest on all amounts awarded.

The organisation asks the Tribunal to reject the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The central question to be determined on this complaint is whether the Secretary-General's impugned decision of 9 November 2022, endorsing the Appeal Board's recommendation and dismissing the appeal of the complainant against the prior decision of the Secretary-General to dismiss him with immediate effect on 3 March 2022, was unlawful.

2. The general background is set out in the preceding account of the facts and in the prior Judgments 4515, 4516, 4578, 4831 and 5094 of the Tribunal. It suffices to recall that the complainant was dismissed from service with immediate effect for alleged misconduct in the form of purported sexual harassment and abuse of authority.

The dismissal decision of 3 March 2022 was taken following (1) an investigation report, which had found that four allegations of sexual harassment occurred as alleged, inappropriate behaviour by the complainant towards female colleagues took place, and five allegations of harassment or abuse of power were substantiated, (2) the initiation of disciplinary proceedings on nine charges listed on the basis of the findings of this investigation report, and (3) a JAC Disciplinary

Chamber report, which had found that seven of the charges brought against the complainant had been proven beyond a reasonable doubt, as well as a recommendation of the latter to the effect that the "sole appropriate sanction" was dismissal.

The impugned decision of 9 November 2022 was taken following a report of the ITU Appeal Board, which had found that the dismissal decision did not violate the applicable rules and had recommended to the Secretary-General to dismiss all the complainant's requests.

3. The complainant challenges the impugned decision on various grounds. The Tribunal considers it appropriate to group them as follows: first, the irreceivability of three out of the four incidents alleged by two of the sexual harassment complainants; second, the conflict of interest of the JAC and of the Secretary-General; third, the violation of due process rights at the investigation and Disciplinary Chamber stages; fourth, the unreasonable length of the procedure before the Disciplinary Chamber; fifth, the violation of the right to a proper internal appeal process before the Appeal Board; sixth, the failure to meet the applicable burden of proof; and seventh, the lack of proportionality of the sanction imposed.

4. Before considering the arguments of the complainant, one procedural matter must be addressed. The complainant requested oral proceedings, but the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow it to be properly informed of their arguments and the relevant evidence. This request is dismissed.

5. At the outset, it is convenient to recall the following in relation to the Tribunal's role in matters pertaining to disciplinary measures. In such a case, firm and constant precedents have it that the role of the Tribunal 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 and whether the decision-maker properly applied the standard when

evaluating the evidence (see, for example, Judgments 5026, consideration 4, 4942, consideration 5, 4749, consideration 5, 4362, consideration 7, and 3863, considerations 8 and 11).

It is also 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 5026, consideration 4, 4770, consideration 12, and 4745, consideration 5).

With respect to the burden of proof applicable in disciplinary proceedings, it is furthermore recognized 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" (see, for example, Judgment 4749, consideration 5). In Judgment 4362, considerations 8 and 10, the Tribunal relevantly stated the following in this respect:

> "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.
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> [...]
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> 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." (Emphasis added.)

Lastly, in respect of harassment matters such as the instant case, established 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 5026, consideration 6, 4961, consideration 6, 4900, consideration 18, 4471, consideration 18, and 4241, consideration 9).

6. Regarding the first plea, the complainant argues that pursuant to Service Order No. 05/05 on ITU Policy on Harassment and Abuse of Authority, applicable at the material time, most of the incidents alleged by the three complainants and discussed in the investigation report were already time-barred by the date the related complaints were submitted in October and November 2019. He maintains that by the time ITU issued its new Service Order No. 19/08 in May 2019, which modified the deadline for the submission of a misconduct complaint from one to three years, those incidents were long time-barred given the wording of Service Order No. 05/05 and the one-year time limit that applied when they occurred.

7. Up to 2 May 2019, Service Order No. 05/05, issued on 16 March 2005, stated the following at paragraph 13 concerning the formal procedure applicable to lodge a complaint on harassment and abuse of authority:

> "13. If the matter is not settled informally, the individual who considers that he or she has been a victim of harassment or abuse of authority can lodge a complaint with the Secretary-General; this must be done no later than one year after the most recent alleged occurrence of harassment or abuse of authority. The complaint should describe, as precisely as possible, the acts, behaviour, language or situation which are believed to have constituted harassment or abuse of authority and the circumstances under which they took place, and give any other information which the complainant considers to be relevant to the case, including any statements from witnesses, with their consent." (Emphasis added.)

8. On 2 May 2019, ITU adopted Service Order No. 19/08 which abrogated and superseded Service Order No. 05/05. At the time, the Secretary-General emphasized particularly this in the introductory text to this Service Order:

> "Service Order No. 05/05 was promulgated on 16 March 2005, setting out the procedures for dealing with cases of harassment, including sexual harassment, and abuse of authority. Nearly fourteen years later, the Union is about to launch a comprehensive and inclusive review process aimed at completing and enhancing those same procedures. As this process is likely to take a certain amount of time to complete, it has been decided to amend, as a matter of priority, two specific aspects of Service Order No. 05/05 which were identified as the most significant shortcomings of the procedures currently in force. They are:
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> a) The deadline to lodge a complaint: The one-year time limit stipulated in Article 13 is clearly too short, particularly since victims of harassment or abuse of power very often do not feel safe and/or empowered enough to take any action until after they have given serious thought as to the options available or until the context in which the harassment took place has changed (e.g. the victim moved to a different service, the supervisor(s) and/or colleague(s) changed).
>
> [...]
>
> Since the procedures in Service Order No. 05/05 shall remain in force while the comprehensive review on the entire system is carried out, these two aspects are currently being addressed in order to mitigate the main difficulties faced on a practical level, thereby allowing the Union to better respond to any case that may arise in the meantime. In no way does the present amendment prejudge the decisions or choices that may be made during the upcoming review process."

Paragraph 13 of Service Order No. 05/05 was thus modified by substituting the words "no later than three years" to the words "no later than one year". No other provisions were modified regarding the timing of the lodging of a complaint. No transitional statutory provisions were added either regarding the implementation of the new provision.

9. In both the investigation report and the JAC Disciplinary Chamber report, this argument on the lack of receivability raised by the complainant was rejected.

The investigator rather noted that in two of the complaints, certain of the allegations occurred more than three years from the date of commencement of the investigation. The investigator added that in both cases, however, they were followed by a further alleged incident of harassment towards the same individual and therefore, they fell within the scope of the investigation. In the context of the section dealing with the alleged inappropriate behaviour towards ITU female staff members, the investigator remarked that one of the examples cited took place more than three years from the date of the commencement of the investigation. Yet, the investigator considered that this example should be viewed as part of "a continuum of a pattern of alleged behavior towards women", and as a result, had been included in the report.

The Disciplinary Chamber did not agree that the investigation on incidents of harassment or abuse of authority that had occurred more than one year before the coming into force of Service Order No. 19/08 constituted a "violation of the principle of non-retroactivity" because the related claims should have been considered as time-barred. For the Disciplinary Chamber, the complaints at stake had been filed on 3 October 2019, 4 October 2019, and in November 2019 which was after Service Order No. 19/08 entered into force. Hence, its view was that it obviously applied to them.

The Disciplinary Chamber stressed that one of the main purposes in promulgating the new Service Order was to extend the timeframe for alleged victims to lodge a formal complaint – noting that the lodging of a formal complaint lead to being granted a formal position of "complainant" in the procedure to which some rights attached – from one year to three years "after the most recent alleged occurrence of harassment or abuse of authority". It observed that the above-cited introductory text to Service Order No. 19/08 emphasized that "[t]he one-year time limit stipulated in Article 13 is clearly too short, particularly since victims of harassment or abuse of power very often do not feel safe and/or empowered enough to take any action until after they have given serious thought as to the options available or until the context in which the harassment took place has changed (e.g. the victim moved to a different service, the supervisor(s) and/or colleague(s)

changed)". In that context, the Disciplinary Chamber found that the promulgation of the new Service Order opened a "window of opportunity" for potential victims at ITU to speak up.

The Tribunal agrees with the investigator and the Disciplinary Chamber that this first plea is ill-founded, for the following reasons.

10. First, it is not disputed that Service Order No. 19/08 was in force when the complaints that triggered the investigation and subsequent procedure were lodged. On the face of its clear wording, this Service Order applied to the present case. The Tribunal considers that it is incorrect to suggest that to so conclude would breach the principle of non-retroactivity because the alleged wrongdoing occurred more than one year before the Service Order's promulgation. As rightly pointed to by ITU, a distinction must be made between substantive and procedural provisions. Indeed, the Tribunal has recalled many times that "a provision is retroactive if it effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely affects the procedures to be observed in the future with respect to such status, rights, liabilities or interests" (see, for example, Judgments 4335, consideration 8, 4257, consideration 11, and 3135, consideration 19).

In this regard, the Tribunal disagrees with the assertion of the complainant that, regarding the timing of the lodging of a complaint pursuant to paragraph 13, Service Order No. 05/05 or No. 19/08 amounted in essence to a statute of limitations and entailed that, after one or three years from the commission of an alleged act of harassment, a perpetrator's responsibility was deemed extinguished such that an investigation process leading to potential disciplinary proceedings could no longer be conducted. This is simply not what the provision indicates. It rather refers to the procedural prerogative of the alleged victims and its purpose is indeed aimed towards the protection of the latter and not at shielding an alleged perpetrator from a potential investigation.

11. Second, in the instant case, regarding the complaints that were considered in the investigation report, one of the incidents occurred within the three years prior to the lodging of the complaint, such that this clearly allowed the Administration to consider other previous incidents relating to this complainant given that the most recent alleged occurrence happened within the applicable timeframe. To suggest, as the complainant does in his pleadings, that an assertion to the effect that facts that occurred prior to the implementation of Service Order No. 19/08 are not time-barred would be "ridiculous and cannot legally stand", misconstrues the wording and purpose of paragraph 13 and fails to recognize the difference between substantive and procedural provisions.

In this respect, the "estoppel" assertion of the complainant, to the effect that ITU was somehow prohibited from making this argument given the findings of the Appeal Board on this issue, is devoid of any merit, particularly in a context where, like here, the complainant is arguing that the Appeal Board recommendation is procedurally flawed and thus unlawful.

ITU has always argued throughout the internal proceedings that the complaints were not time-barred considering that paragraph 13 of Service Order No. 19/08 allowed for their filing by the complainants involved. ITU is entitled to further develop its position before the Tribunal, provided that the complainant is given the opportunity to comment on it – which, in this case, has been ensured.

12. Third, the Tribunal observes that the remarks made in Judgment 5006, where it found that the filing of complaints for harassment was indeed time-barred, provide a good illustration of a situation where a similar argument was retained in circumstances that differ significantly from the present case precisely because of the relevant statutory language used.

In Judgment 5006, the statutory provisions that were in play left no doubt as to their non-retroactive character. In that case, the Tribunal held that an allegation of sexual harassment raised by a complainant in June 2019 should have rather been raised under the 2015 applicable

Policy Circular within a year of the events of December 2015 that she had identified; since she did not raise them within the specified time limit, they became "inadmissible". However, the applicable Policy Circular stated specifically that "any complaint filed more than a year after the most recent alleged incident will be inadmissible". The Tribunal considered that, unambiguously, this created a time limit restricting consideration of allegations of sexual harassment to those made concerning conduct within the year preceding the complaint and that "inadmissible" must be taken to mean, in this context, that it would and could not be entertained afterwards by the organization. In addition, it was emphasized that the new Policy Circular commenced, on the first page, with an explanation of its origins and aims stating that "[t]his policy takes effect immediately", while including as well a specific provision to the effect that "[a]ll complaints of sexual harassment received prior to this date [would] continue to be dealt with under the provisions of [the 2015 Policy Circular]".

Quite clearly, in contrast to the language of paragraph 13 of Service Order No. 19/08, the new Policy Circular discussed in Judgment 5006 was not intended to have retrospective operation. In the instant case, none of the incidents covered by the complaints analysed in the investigation report were time-barred as the complainant contends. The plea that three out of the four incidents alleged by two of the sexual harassment complainants were not receivable is unfounded.

13. Regarding his second plea, the complainant alleges that a conflict of interest arose on two accounts, namely, (1) the fact that the Chair of the JAC was one of the complainants who brought allegations against him and the circumstance that two other members of the JAC were among the witnesses listed in the investigation report, and (2) the fact that he filed a complaint for harassment against the then Secretary-General on 30 March 2021. The complainant submits that the dismissal decision and, consequently, the impugned decision, were thus tainted by either a perception of a conflict of interest on the part of the JAC Disciplinary Chamber or a real conflict of interest on the part of the Secretary-General, rendering both decisions unlawful.

14. In Judgment 3958, consideration 11, the Tribunal recalled that "[a]ccording to [its] case law, '[i]t is a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice. Persons taking part in an advisory capacity in the proceedings of decision-making bodies are equally subject to the above-mentioned rule. It applies also to members of bodies required to make recommendations to decision-making bodies. Although they do not themselves make decisions, both these types of bodies may sometimes exert a crucial influence on the decision to be taken.' (Judgment 179, under 1; see also Judgments 2225, under 19, 2671, under 10, 2892, under 11, and 3732, under 3.)" The Tribunal added that "[a] conflict of interest occurs in situations where a reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality. Even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest."

It is however convenient to also recall that an allegation of conflict of interest or lack of impartiality must be substantiated and based on specific facts, not on mere suspicions or hypotheses, and that the complainant bears the burden of proof in this regard (see Judgments 4915, consideration 5, 4711, consideration 5, 4617, consideration 9, and 4616, consideration 6).

15. In the present case, the Tribunal considers that a reasonable person properly informed of the situation would not have found that the alleged circumstances raised by the complainant amounted to either a perceived or a real situation of conflict of interest. When objectively analysed and considered, the situations criticised do not lead a reasonable person to think that either the JAC Disciplinary Chamber or the Secretary-General could not have brought a detached and impartial mind to the issues involved.

16. Firstly, with respect to the JAC Disciplinary Chamber, the Tribunal considers that, in the circumstances of the case, a reasonable person would not conclude that a conflict of interest, real or perceived, could stem from the fact that one of the three complainants identified in the investigation report was the Chair of the JAC, the body that constitutes, pursuant to the applicable ITU Staff Regulations and Staff Rules, disciplinary chambers from within its members to examine each specific disciplinary case.

The complainant's assertion that, as Chair, that person was informed from the beginning of his case being submitted to the JAC, or that she was selected as a Chair by the Secretary-General at a time when the latter knew that she was one of the alleged victims in his case, such that this should have led her to withdraw from her role of JAC Chair, is speculative at best with regard to an alleged conflict of interest. This speculation is put to rest when the objective circumstances of the situation are duly considered. In this regard, the record indicates, as clearly explained in the Disciplinary Chamber report of 3 March 2022, that not only was the JAC Chair not part of the Disciplinary Chamber set up to examine the complainant's case, but that she was not even informed of the referral of his case to the JAC. It also appears from the record that, from the transmittal of the case to the JAC Secretary for disciplinary matters, all related communications, including those determining the composition of the Disciplinary Chamber, were channelled through the Vice-Chair of the JAC and at no point shared with this Chair. The complainant offers no credible evidence that would question this.

The same applies to the JAC members that the complainant identified as witnesses listed in the investigation report. ITU explained that they were not part of the Disciplinary Chamber that issued the report in this case and that they had no bearing on its analysis or recommendation. Again, the complainant has not presented any credible evidence that would suggest otherwise.

Similarly, the related affirmation of the complainant, to the effect that, since the Secretary-General took the dismissal decision of 3 March 2022 and the impugned decision of 9 November 2022, while also being

the official nominating the JAC members pursuant to the applicable ITU Staff Regulations and Staff Rules, it establishes a perceived conflict of interest on the part of the JAC, remains speculative at best without more. This by itself would not lead a reasonable person to, as a result, cast doubt on the JAC Disciplinary Chamber impartiality. In addition, the Tribunal notes that the complainant recognized himself that the Secretary-General nominated the JAC members on 28 February 2019, that is, well before the latter was made aware about the harassment complaint filed against him.

17. Secondly, the assertion that the Secretary-General had a real conflict of interest in the case at hand merely because the complainant had lodged a harassment complaint against him is not in itself conclusive either when the situation is objectively analysed through the lens of a reasonable person.

On this subject, the record indicates that this harassment complaint filed by the complainant was sent to the Deputy Secretary-General on 30 March 2021, some five weeks after the final investigation report had been shared with him for comments. This complaint was afterwards sent to the Ethics Office for initial verification, after which the Ethics Officer considered that it did not reveal a *prima facie* case of harassment, and recommended its closure. This Deputy-Secretary-General decision to close the case without investigation was communicated to the complainant on 19 April 2021, such that no complaint against the Secretary-General was pending when the complainant's case was under review before the Disciplinary Chamber or when the contested decisions were made.

While it is true that this decision to close the case without investigation was set aside for procedural considerations in Judgment 4578 delivered on 28 November 2022, this bears no relevance to the analysis given that it took place well after both the dismissal and the impugned decisions.

Likewise, the Appeal Board's apparent queries concerning these alleged situations of perceived or real conflict of interest, without any other answers than its recommendation to dismiss the appeal of the

complainant on all aspects, certainly do not amount to a confirmation that this second plea is founded.

Lastly, it is worth recalling that the complainant was dismissed from service for alleged misconduct in the form of sexual harassment and abuse of authority towards staff members other than the Secretary-General. This is the only alleged misconduct upon which the Disciplinary Chamber focused and that led to the contested decisions made by the Secretary-General.

This second plea is rejected.

18. In his third plea, the complainant submits that various irregularities in the investigation and disciplinary proceedings process amply demonstrate that his due process rights were violated. He insists on three irregularities.

First, and most important according to his pleadings, he maintains that, despite being suspended from October 2019 for the alleged misconduct, he only received for the first time in November 2021, through the JAC Disciplinary Chamber, some 50 witness statements as well as the interviews of the three complainants in the present procedure that were relied upon by ITU. Second, he notes that, even though the incidents alleged by the three complainants (Complainants l, 2 and 3) were in dispute, he was not given the possibility to confront them, eventually through his legal counsel, to question them on the fallacious facts and on the inconsistencies and contradictions in their statements, notwithstanding his specific requests. Third, he argues that the exculpatory witnesses that he had suggested were not all interviewed and that one witness statement, concerning an exculpatory witness that he requested, Mr A.R., disappeared from the file. Yet, so he argues, the final determination was based only on hearsay and on the contradictory statements of a few witnesses.

19. The Tribunal's case law recognizes that an accusation of harassment requires an international organization to investigate the matter in a manner designed to ascertain all relevant facts without compromising the good name of the employee and that the employee

be given an opportunity to test the evidence put against him or her and to answer the charge made (see, for example, Judgments 4832, consideration 28, 4011, consideration 9, 2771, consideration 15, and 2475). This necessitates, amongst others, that the person accused be kept informed of the content of statements and testimonies gathered as part of the relevant investigation to challenge them if necessary. The Tribunal's case law accepts, however, that there may be situations in which an organization can, in some circumstances, refuse to provide the subject of disciplinary proceedings with the transcripts of witness interviews without committing a breach of due process (see, for example, Judgments 4343, consideration 13, and 3640, considerations 17 to 22). The objective is to ensure that the person accused is sufficiently informed of the evidence on which the administration intends to base its decision and that he has an effective opportunity to test that evidence and to defend himself against the allegations of misconduct.

20. In the instant case, the Tribunal considers that the complainant fails to establish that because of the three alleged irregularities that he identified, his due process rights were somehow violated. The Tribunal indeed finds that the record rather indicates the exact opposite, that is, that at every stage, the organization made sure that the rights of the complainant to be informed of, comment and reply to the evidence put against him were properly respected.

In particular, the Tribunal first observes that according to the record, despite the claims of the complainant to the contrary, he did receive in due course the documents annexed to the investigation report, which included the witness statements as well as the interviews of the three complainants. The investigator completed the investigation report on 18 February 2021, and on 23 February 2021, the Deputy Chief, Human Resources Management Department, shared with the complainant the report as well as the entire set of supporting documents, except for two witness statements apparently due to concerns expressed by those witnesses and after assessing that they did not constitute material pieces of evidence in the case. These documents were shared via a OneDoc tool, which the complainant acknowledged he received. A screenshot of this OneDoc filed in the record shows that all

documents were placed in the relevant OneDoc folder between 17 and 23 February 2021, and that they were all shared.

When the complainant wrote on 2 March 2021 complaining of not having received the report, it was immediately clarified that access had been granted through the link emailed to him on 23 February 2021 and particularly specified that the report and all its annexes had been sent to him. He responded confirming that he had been able to access the report. While it is true that he did not expressly mention the annexes, he never alluded to difficulties in accessing the rest of the documents, which were all in the same folder. The Disciplinary Chamber understood from these exchanges that since the complainant had confirmed having received the whole report, he had to have received and been able to access the rest of the related documents. In addition, as appositely observed by ITU, the assessment annexed to the notification of charges of 2 June 2021 plainly stated that the complainant "was sent the witness statements taken in the approximately 70 interviews conducted during the investigation with the Final Report for comment". It is a reasonable inference to draw that if it was not the case, it would logically have triggered an inquiry or a reaction from the complainant. It did not.

As to the complainant's allegations that two witness statements were withheld, the Tribunal notes that they were not material to the outcome of the case and, in any event, there was a necessity to protect these witnesses. As to Mr A.R., the record indicates that he was only a potential witness and was not retained.

21. Second, the contention of the complainant that he had a right to question the three complainants directly or through counsel is devoid of any merit.

Pursuant to "ITU Investigation Guidelines", found in Service Order No. 19/10, and in accordance with well-established practice, at the investigation stage, evidence is collected by the investigator and only the investigator generally interviews complainants and witnesses. The rights of the person who is the subject of the investigation are protected by the sharing of this evidence with him and the opportunity

to provide relevant observations as well as any exculpatory evidence. This has been done in the present case.

Additionally, the Tribunal relevantly observed in Judgment 4914, consideration 13, that a complainant was "mistaken to suggest that he was entitled to participate in the investigation in such a way that he could have, for instance, questioned or cross-examined himself, or through counsel, the persons that the investigator met at that stage of the process. The Tribunal's case law does not support such an extensive right to an adversarial procedure at the investigation stage of the process as the complainant appears to be suggesting (see, for example, Judgment 4770, consideration 6)."

22. Third, established precedents of the Tribunal (see, for example, Judgments 5026, consideration 11, and 5003, consideration 5) confirm that an investigator has the duty to ascertain all relevant facts and that 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), which entails 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). In the instant case, the investigation report indicates that exculpatory evidence identified by the complainant was indeed duly and sufficiently considered.

As the record shows and as ITU again appropriately emphasized, the complainant was interviewed by the investigator in September 2020 and at that time, the investigator had already interviewed the three complainants and 34 other witnesses. Following the interviews with the complainant and based on his indications, 16 other women were interviewed. Even though the complainant kept putting forward additional names of colleagues he thought would express positive opinions about their personal collaborations with him, at some point, having conducted the number of interviews that were done, the investigator could reasonably consider that she had gathered sufficient and adequate information on the case. In the context of what transpires from the record, to suggest, as the complainant does, that not all

potential exculpatory witnesses were interviewed, or that some of these witness statements were ignored, remains highly insufficient to support an assertion that it amounted to a breach of his due process rights.

It follows from the above that this third plea is unfounded too.

23. The fourth plea raises the discrete issue of the alleged unreasonable length of the delay taken by the Disciplinary Chamber to issue its report. Regarding this, the complainant argues that the investigation report was issued on 23 February 2021, that the Secretary-General decided to submit the case to the JAC for a disciplinary procedure three months later, on 2 June 2021, and that it was not until 3 March 2022, that is nine months afterwards, that the Disciplinary Chamber issued its report.

The Tribunal observes that the complainant's submission on this issue is not that this allegedly unjustified unreasonable delay entails that the dismissal decision or the impugned decision are unlawful as a result, but rather that it justifies that he be granted moral damages. As recalled in Judgment 4947, consideration 17, established precedents of the Tribunal indeed have it that "an unreasonable delay does not in itself render the decision taken at the end of the internal procedure in question unlawful (see, for example, Judgments 4666, consideration 11, 4664, consideration 9, and 4584, consideration 4)".

The Tribunal considers that this plea is unfounded. While an international organization clearly has the obligation to put in place the necessary mechanisms to deal with internal procedures in a timely manner, the record easily establishes that the processing of the disciplinary proceedings in the present case took some time due to its magnitude and complexity. As ITU rightly stressed in its pleadings, the case involved multiple complainants and allegations, tens of witnesses and a variety of other kinds of evidence, as well as very comprehensive comments by the complainant. The file contained thousands of pages and the Disciplinary Chamber report shows that it undertook to make a thorough review of the evidence and of the arguments. In this context, the suggestion that this delay was unreasonable to the point of justifying the award of moral damages to the complainant cannot be sustained.

24. Regarding his fifth plea, the complainant argues that his right to a proper and effective internal appeal procedure was violated. Given that the impugned decision relied exclusively on the Appeal Board's flawed report and recommendation, he maintains that it is consequently unlawful and must be set aside.

25. In Judgment 5003, consideration 5, the Tribunal relevantly recalled the following in relation to the role of internal appeal bodies:

> "[...] 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).
>
> [...]"

26. In the present case, the complainant asserts that most of the pleas that he put forward in his appeal were not substantively examined by the Appeal Board, who selectively and arbitrarily decided what to examine or not in its report. He submits that except for the claim related to conflict of interest, there was no examination and no finding by the Appeal Board in relation to his other detailed and extensively argued claims, particularly regarding the assessment of the evidence and applicable burden of proof and the analysis of the proportionality of the sanction.

27. The Tribunal observes that while it is clear from the report that the Appeal Board took note of many elements raised in the appeal, questioned and discussed certain aspects, pointed to alleged inconsistencies or irregularities in the investigation report and in the investigation process, and even asserted that it "ha[d] still some doubts on the evidence from both sides", it nonetheless refrained from making determinations of its own in this regard or from examining the consequences of the above on the dismissal decision. The Appeal Board chose instead to point out that its mandate was not to redo the investigation and that, in its belief, the dismissal decision of 3 March 2022 did not violate the applicable rules.

28. The Tribunal considers that this was seriously deficient and misguided, and that this way of proceeding on the part of the Appeal Board, endorsed by the Secretary-General without adding anything else, suffices to vitiate the impugned decision.

29. An internal appeal body has a duty to address pleas of substance (see, for example, Judgments 4534, consideration 17, 4169, consideration 5, and 4063, consideration 5). Yet, the Appeal Board report shows that while it apparently identified what it considered as being potential issues on the question of the alleged conflict of interest, it did not resolve these issues as part of its remarks. Similarly, regarding the evidence and the burden of proof, the Appeal Board noted the applicable standard of preponderance of evidence under the ITU Investigation Guidelines (Service Order No. 19/10) and the beyond reasonable doubt standard applied by the Disciplinary Chamber, and even expressed having some doubts on the evidence from both sides. Still, it refrained from explaining what to conclude from these different standards and what these doubts were and amounted to, or from resolving any discrepancies that may have existed in its mind.

30. In Judgment 4923, consideration 6, the Tribunal found that an appeal board was wrong to consider that it was not competent to ascertain, in its opinion, whether an internal investigative body had correctly assessed the probative value of the documents and

information provided by a complainant in support of an internal complaint, and that this error of law had the effect of denying the complainant his right to have the merits of his internal appeal duly considered. The same applies in the present situation.

31. This leaves the Tribunal with no other alternative but to annul the impugned decision and return the matter to ITU so that the internal appeal process be redone and a proper report be issued for consideration by the Secretary-General. While the complainant argued that in the event of such a finding, the Tribunal should not return the matter to the organisation and rather do itself the necessary analysis of the investigation and Disciplinary Chamber reports to resolve and decide whether the burden of proof was satisfied and the sanction was proportionate, the Tribunal considers that this would be ill-advised in the circumstances of this case.

This misconceives the role of the Tribunal in such situations, summarized above at consideration 5, which is normally not to assess itself the evidence. In Judgment 4858, consideration 17, the Tribunal relevantly recalled that "[...] [i]t is not the Tribunal's role to reweigh the evidence collected by an investigative body, the members of which, having directly met and heard the persons concerned or implicated, were able immediately to assess the reliability of their testimony. For that reason, reserve must be exercised before calling into question the findings of such a body and reviewing its assessment of the evidence (see Judgments 4764, consideration 7, and 4237, consideration 12)."

Moreover, for the Tribunal to determine whether it is satisfied that evidence was available for the decision-maker to reach the conclusions that it reached and that the latter properly applied the relevant standard in doing so, it needs to first have available the findings and determinations of the internal appeal body in this regard when the latter, like in the instant case, expressly indicates still having "some doubts on the evidence from both sides". As the Tribunal recalled in Judgment 4923, consideration 5, "[w]hile the Tribunal's sole function is to review the lawfulness of these decisions and, ordinarily, it rules only on points of law, it is for the appeal bodies, which are vested with

a power of review extending to a complete re-examination, to determine whether the decision submitted to them was, in their view, the correct decision or whether, on the facts, some other decision should have been taken (see, for example, Judgments 3161, consideration 6, or 3032, consideration 10)". It is indeed particularly not the Tribunal's role to conduct investigations similar to those conducted by an appeal body.

32. In these circumstances, it is therefore appropriate for the Tribunal, rather than directly determining the lawfulness of the dismissal decision of 3 March 2022, to remit the case to ITU to allow the internal appeal procedure challenging that decision to be properly done and completed.

It should be recalled that, as the Tribunal's case law has long emphasized, the right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority (see, for example, Judgments 4816, consideration 7, 4499, considerations 13 and 14, 3067, consideration 20, and 2781, consideration 15). This is especially so in the situations where the Tribunal exercises only a limited power of review and will not supplant the organisation's assessment with its own, whereas an appeal board can undertake a more comprehensive review and issue recommendations based on a different assessment or even on grounds of fairness or advisability.

The Tribunal adds this. As it emphasized in Judgment 4499, consideration 13, even in the event that the internal appeal procedure does not result in a final settlement of the dispute, the proper consideration by the Appeal Board of the circumstances in which the decision was taken to dismiss the complainant will be of great assistance by allowing the Tribunal to have before it the findings of fact and the items of information, analysis and assessment resulting from the deliberations of that body. At the moment, these findings and determinations are unknown and missing.

33. Based on the foregoing conclusion, the Tribunal will set aside the impugned decision of 9 November 2022, without it being necessary to consider the complainant's further sixth and seventh pleas pertaining to the issues of the burden of proof and proportionality of the sanction. The Tribunal will remit the matter to ITU for a new consideration of the complainant's internal appeal by a newly composed Appeal Board. The Secretary-General must, within 30 days of the delivery of this judgment, convene the Appeal Board to allow the internal appeal procedure to be done and completed in accordance with the above remarks of the Tribunal.

To be clear, this has, however, no bearing on the above findings of the Tribunal concerning the first, second, third and fourth pleas of the complainant that were held to be unfounded. These pleas related to alleged procedural flaws at the investigation or Disciplinary Chambers stages, not at the internal appeal stage. Regarding these pleas, the Tribunal can also rule upon them based on the record as it currently stands.

34. Given this remittal, the complainant's claims seeking his reinstatement and the award of material, moral and exemplary damages for the injury allegedly suffered because of the dismissal decision, which are connected to the consideration of the merits of the case, cannot be addressed at this stage. These claims for reinstatement and material, moral and exemplary damages may only be allowed if the complainant prevails on his substantive pleas regarding the burden of proof and the proportionality of the sanction. Inasmuch as the present complaint succeeds on limited procedural grounds and the case will be remitted to ITU, these claims remain in abeyance.

For similar reasons, the separate claims of the complainant regarding legal fees during the internal proceedings will not be addressed.

35. In a situation like the present case, a complainant could nonetheless be potentially entitled to an award of moral damages for the breach of his or her right to an effective appeal stemming from the

flawed internal appeal process. But this cannot be ordered here by the Tribunal for the following reason.

In his pleadings, the complainant has not articulated the nature of the injury that he may have suffered because of the improper and incomplete internal appeal process that he denounced. In this regard, the Tribunal observes that the complainant did not specifically request moral damages based on the alleged flaws in the internal appeals procedure. It is only in a separate document entitled "Personal Statement – on moral injuries and damages" annexed to his complaint that he stated that he suffered significant moral injury because, amongst others, of gross breaches of due process and violation of fundamental legal principles including right to fair process and investigation.

However, in Judgment 4996, consideration 5, the Tribunal recalled that "[i]t should be borne in mind that this practice of referring to the arguments that appear in a document annexed to the complaint, rather than setting them out in the complaint itself as required by Article 6(1)(b) of the Rules of the Tribunal, is not admissible (see, for example, Judgments 4051, consideration 3, 3692, consideration 4, or 3434, consideration 5)". Similarly, in Judgment 4715, consideration 12, it remarked that "[t]he Tribunal has stated on a number of occasions, and recently with increasing frequency, that it is inappropriate to effectively incorporate by reference into the pleas before the Tribunal arguments, contentions and pleas found in other documents, often a document created for the purposes of internal review and appeal (see, for example, Judgment 3920, consideration 5, and the case law cited therein). The Tribunal would be entitled to disregard those contentions and pleas."

36. The complainant has finally asked to be granted "[s]uch other relief which is necessary, just and fair", but the Tribunal has often recalled that this kind of request is too vague to be receivable (see, for example, Judgments 4818, consideration 13, and 4602, consideration 8).

37. Given that the complainant prevails on a decisive plea, the Tribunal will award him 10,000 Swiss francs in costs for the present proceedings.

DECISION

For the above reasons,

1. The impugned decision, dated 9 November 2022, is set aside.
2. The matter is remitted to ITU in accordance with considerations 31 to 33 of this judgment.
3. ITU shall pay the complainant costs in the amount of 10,000 Swiss francs.

In witness of this judgment, adopted on 3 November 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.