

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M.
v.
WHO

141st Session

Judgment No. 5152

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. M. against the World Health Organization (WHO) on 28 January 2021 and corrected on 25 March 2021, WHO's reply of 15 July 2021, the complainant's rejoinder of 20 September 2021 and WHO's surrejoinder of 9 December 2021;

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 seeks a review of the measures taken following the Organization's acknowledgment of the violation of its duty of care towards him and asks that it be ordered to publish a press release to clear his reputation and to pay him additional amounts in moral damages and legal "fees".

The complainant, a staff member of UNAIDS – a joint and co-sponsored United Nations (UN) programme on HIV/AIDS administered by WHO – joined UNAIDS in 2002. At the time of the events giving rise to the present complaint, the complainant served as UNAIDS Country Director in Nigeria. Prior to that, he had served as UNAIDS Country Director in South Africa.

In April 2018, Ms D.-M., a South African AIDS activist, posted on social media a message she had previously received from the complainant in which he addressed her with the salutation “My dear fair lady”. Next to the message, Ms D.-M. posted her comment thereon, in which she alleged that the complainant was a “predator” who “chased skirts”, that she was “saying this from experience” as he had also “chased” her, and that he was now “congregating around” the then UNAIDS Executive Director because he wanted the position of UNAIDS Deputy Executive Director, as “rumour” had it.

On 3 May 2018, an open editorial signed by Ms D.-M. and 22 other women activists was published on an online resource. In that open editorial, which was adapted from a letter sent to the UNAIDS leadership, Ms D.-M. and her co-authors alleged that “many activists have had to deal with [the complainant’s] suggestive messages and overtures”, that a number of women “ha[d] noted that [he] ha[d] asked to meet male colleagues at the office, but ha[d] asked them to meet him at his hotel”, and that “he seem[ed] to believe he ha[d] a right to inappropriate behaviour”.

Ms D.-M.’s posts and publications, which attracted significant attention in the media, coincided with the complainant’s application for the position of UNAIDS Deputy Executive Director and his public support for the then UNAIDS Executive Director amidst allegations of a culture of impunity being prevalent within UNAIDS. Although Ms D.-M. was invited by UNAIDS to file a formal complaint against the complainant, she declined to do so.

On 29 June 2018, the complainant wrote to the UNAIDS Executive Director informing him, inter alia, that he considered the accusations Ms D.-M. had publicly made against him a “deliberate libel with a strategic end in mind” and that, while he intended to respond in a “private, legal-assisted capacity”, he would not do so in a way that might “add fuel to the fire”.

In a letter of 4 September 2018, the complainant’s counsel informed Ms D.-M. that her posts were defamatory and that the complainant demanded that she publish a written retraction of her defamatory comments on all social media she had posted and the online

resource where the open editorial had appeared, and that she make available a copy of her written retraction to her employer.

On 12 September 2018, Ms D.-M. posted on social media the 4 September 2018 letter she had received from the complainant's counsel under the heading "UNAIDS Nigeria Country Director [...] is threatening me with legal action for speaking out about sexual harassment". In the accompanying comment, she asserted all her views were shared in the public interest.

On 13 September 2018, UNAIDS circulated to all staff members an email with "talking points", which had been prepared for release to the media to help clarify the position of UNAIDS on the 4 September 2018 letter the complainant's counsel had sent to Ms D.-M. requesting her to retract her allegations. The email did not refer to the complainant by name but as a "UNAIDS staff member". The next day, on 14 September 2018, UNAIDS issued a press release in which the Executive Director confirmed the non-involvement of UNAIDS in the 4 September 2018 letter sent by the complainant's counsel to Ms D.-M. and reiterated UNAIDS zero-tolerance policy on sexual harassment as well as its commitment to protect victims. Similarly to the email, the press release did not refer to the complainant by name but as a "UNAIDS staff member".

On 18 September 2018, a Public Interest Law Centre based in South Africa addressed a letter to the UNAIDS Programme Coordinating Board (PCB), attaching a signed petition in support of Ms D.-M. and demanding that the complainant "retract" the "threats" contained in his counsel's 4 September 2018 letter to Ms D.-M. and that UNAIDS "empanel an independent body to investigate the claims against [the complainant]".

Meanwhile, on 14 September 2018, the complainant was informed of the decision to place him, with immediate effect, on special leave with full pay until 31 October 2018 in order to safeguard and facilitate the process for the clarification of the misconduct allegations made against him by Ms D.-M., and to mitigate the risk of reputational and material damage to UNAIDS. On 20 September 2018, the Executive Director referred Ms D.-M.'s allegations against the complainant to

WHO's Office of Internal Oversight Services (WHO/IOS) with a request for a formal investigation. The complainant was relevantly informed by an email of the same day.

On 31 October 2018, he was informed that his special leave would be extended until 31 December 2018 or until the IOS preliminary review was completed, whichever was earlier. On 13 November 2018, the complainant filed a request for administrative review of the 14 September 2018 decision to place him on special leave and the 31 October 2018 decision to extend his special leave, requesting the rescinding of these decisions, a copy of all complaints and/or allegations against him, the publication by UNAIDS of a press release to clear his name, any other appropriate measures to protect his reputation and family honour, moral damages and costs.

On 22 November 2018, following the interview of a UNAIDS spokesperson, an article appeared in the press stating: "The U.N. agency for HIV and AIDS has placed its country director for Nigeria on administrative leave following allegations of sexual harassment, a spokeswoman said on Thursday".

On 30 November 2018, the complainant's counsel wrote to the Executive Director and referring to the aforementioned article, he emphasised it was inaccurate as it stated that the complainant was put on administrative leave over sexual harassment allegations whereas, in fact, he was put on special leave over general allegations of misconduct. The complainant's counsel reiterated the requests the complainant had made in his 13 November 2018 request for administrative review.

On 21 December 2018, the complainant was informed that IOS had not concluded its preliminary review and therefore his special leave would be further extended until 31 January 2019 or until the preliminary review was completed, whichever was earlier. On 31 January 2019, he was again informed that, as WHO/IOS had not been able to conclude its preliminary review, his special leave would be further extended until 28 February 2019 or until the preliminary review was completed, whichever was earlier. On 23 February 2019, the complainant filed a request for administrative review of the

31 January 2019 decision, reiterating the same requests he had made in his first request for administrative review.

Having concluded its preliminary review, WHO/IOS submitted its report on 22 February 2019, concluding that Ms D.-M.'s allegations against the complainant were "unsupported by *prima facie* evidence and d[id] not merit further investigation", and recommending that the case be closed with a reminder to the complainant to ensure that his communications maintain a professional tone and that he use gender-inclusive language in his written and verbal communications with internal and external interlocutors. By a letter of 28 February 2019, the complainant was informed that the Executive Director had decided to accept the recommendation of WHO/IOS. Accordingly, the complainant's special leave status ended that same day and he was authorised to resume his functions as of 1 March 2019.

By a letter of 12 April 2019, the Deputy Executive Director informed the complainant of her decision on his requests for administrative review which, being substantially the same, had been reviewed jointly. The Deputy Executive Director considered that the decision to place him on special leave was taken in good faith, in the interests of the organisation, and in compliance with the Staff Regulations and Staff Rules, and the Executive Director's authority. Accordingly, the complainant's claims to rescind the decisions in question and to publish a press release to clear his name and protect his reputation and family honour had been duly addressed and were therefore moot. As regards the complainant's claims for damages by reason of the 14 September 2018 UNAIDS press release and the inaccurate information contained in the 22 November 2018 article appearing in the press, the Deputy Executive Director considered that, while these claims had been addressed by UNAIDS removing the former from its website and taking action to correct the latter, the mischaracterization of his leave in the 22 November 2018 press article warranted the award of 1,500 United States dollars in damages. Noting that a request for administrative review did not require legal assistance, the Deputy Executive Director considered that the award of legal costs was not warranted.

On 27 July 2019, the complainant appealed to the WHO Global Board of Appeal (GBA) against the 12 April 2019 decision, requesting the same relief he had sought in his requests for review. In its report of 14 September 2020, the GBA concluded that, while the decision to place the complainant on special leave and the subsequent extension decisions conformed with the applicable rules, UNAIDS had not exercised the requisite duty of care during the preliminary review stage of the investigation. Specifically, the GBA concluded that moral damages were warranted for the harm suffered by the complainant as a result of the UNAIDS press release of 14 September 2018, the dissemination of its 13 September 2018 “talking points”, and the publication of the 22 November 2018 article in the press. In determining the appropriate quantum, the GBA considered that the harm resulted not from the mischaracterization of the complainant’s leave but, rather, from the information provided making him identifiable and linking him to allegations of sexual harassment while the matter was at the preliminary review stage. The GBA thus recommended awarding the complainant 4,000 United States dollars in moral damages (in addition to the 1,500 dollars already granted) and 4,000 dollars in legal “fees”, subject to the provision of invoices and proof of payment.

On 26 October 2020, the Executive Director decided to accept the GBA’s recommendation. This is the impugned decision.

The complainant asks the Tribunal to order WHO/UNAIDS to publish a press release (the content of which is to be agreed to by the complainant in advance) to clear his name and to take any other appropriate measures to protect his reputation and family honour; such measures can include any or all of the following: (a) send a communication to relevant news media (the content of which is to be agreed to by the complainant in advance); (b) authorize him to send to relevant media a copy of the 28 February 2019 letter regarding the outcome of the WHO/IOS investigation, along with a request that the media remove articles from its website(s) regarding the allegations in question and/or publish a retraction; (c) authorize him to send a communication to relevant media, citing the 28 February 2019 letter, requesting that the media remove the articles regarding the allegations

in question and/or publish a retraction; (d) any other measure to protect him from further damage to his reputation as the Tribunal considers appropriate. He claims moral damages in the amount of 44,500 Swiss francs, in addition to the 5,500 United States dollars already paid by UNAIDS, and he also claims reimbursement of legal “fees” in the amount of 16,000 Swiss francs, in addition to the 4,000 United States dollars recommended by the GBA and agreed to by WHO/UNAIDS.

WHO asks the Tribunal to dismiss the complaint on the basis that any breach of its duty of care towards the complainant has been duly addressed and compensated in the internal appeal proceedings, and that no further awards of moral damages or reimbursement of legal “costs” are warranted. Should the complainant’s claim for the reimbursement of legal “costs” be granted by the Tribunal, WHO requests that a maximum amount of costs be established, and that payment be made conditional upon the receipt of invoices, proof of payment, and the complainant not being eligible for reimbursement via other sources.

CONSIDERATIONS

1. When Ms D.-M., who was not a WHO/UNAIDS staff member, publicly alleged that the complainant was a sexual predator and skirt chaser, UNAIDS placed him on special leave with full pay pending a preliminary review of the allegations against him to determine if an investigation was warranted. At the same time, UNAIDS issued an internal communication in the form of an email to all staff and an external press release that resulted in headlines such as: “UNAIDS Nigeria director on administrative leave over sexual harassment allegations”. Although invited twice to do so, Ms D.-M. did not submit a formal complaint.

Yet, it was not until five months after the complainant was placed on special leave that Ms D.-M. was first interviewed by WHO/IOS in connection with the preliminary review into her allegations. WHO/IOS ultimately determined that the allegations against the complainant were unsupported by evidence. UNAIDS thus found that the matter did not merit further investigation and it closed the case.

In the impugned decision, UNAIDS accepted the findings and recommendations of the GBA, thus recognizing that through its communications (namely, its 13 September 2018 email with the “talking points”, its 14 September 2018 press release, and its spokesperson’s interview to the press), it had violated its duty of care towards the complainant, in view of the confidentiality attached to the internal investigative process and the fact that all those communications preceded the conclusion of the preliminary review. The complainant considers that, nevertheless, UNAIDS failed to take appropriate measures to clear his name and to protect his reputation and that it also failed to pay him adequate moral damages and legal costs. He asks the Tribunal to order WHO/UNAIDS to publish a press release (the content of which is to be agreed with him in advance) to clear his name and to take any other appropriate measures to protect his reputation and family honour, and to award him 44,500 Swiss francs in moral damages and 16,000 Swiss francs in legal “fees”.

2. Before considering the arguments of the complainant, it is convenient to make two observations.

First, the Tribunal notes that in his pleadings, the complainant is not asking the Tribunal to set aside any of the decisions rendered by UNAIDS, including the impugned decision of 26 October 2020. He is merely asking for relief in the form of an order for specific performance of an obligation and the award of moral damages and legal “fees”. The expression “specific performance” is used by the complainant in his pleas and the Tribunal will, for ease of reference, adopt this expression though in some of the case law the expression “mandatory injunction” or “injunction” is also used.

Second, UNAIDS argues that the complainant’s claims related to the alleged adverse impact of the impugned decision on his career prospects within UNAIDS are irreceivable, given that he presently serves at the D.2 grade and that, further to a GBA recommendation in another appeal, he was awarded 7,500 Swiss francs in moral damages and 5,000 Swiss francs in legal “fees” for the decision not to shortlist him for interview in the recruitment process for the position of

UNAIDS Deputy Executive Director. In his pleadings, the complainant submits that he is not requesting relief for damage incurred in the context of this recruitment process, such that this issue is indeed moot.

3. The complainant advances two main pleas.

First, he argues that UNAIDS violated its duty of care towards him not only by disregarding the confidentiality attached to the internal investigative process but also by delaying the investigation and not conducting promptly the preliminary review into the allegations made against him, by publicly providing misleading information about these accusations, by failing to take the appropriate measures to correct the effects of its mistakes, and by placing him on special leave without consideration for his own interest.

Second, he argues that he is entitled to seek relief in the form of an order for specific performance to compel UNAIDS to issue a press release to rectify the negative impact on his reputation, as well as an order in damages for moral prejudice and another one in legal “fees” that stand at much higher amounts than what UNAIDS acknowledged owing him.

4. Regarding the first plea about UNAIDS’ violation of its duty of care, the Tribunal observes, at the outset, that in its report of 14 September 2020, the GBA concluded that UNAIDS had not exercised the requisite duty of care to properly protect the complainant’s reputation in the present case. This finding was based mainly on the assessment that UNAIDS’ 13 September 2018 email with the “talking points”, its 14 September 2018 press release, and the article appearing in the press further to its spokesperson’s interview contained factual information sufficient to identify the complainant as being under investigation for sexual harassment, even though the matter was then at the stage of the preliminary review process that required confidentiality.

The Tribunal further observes that the impugned decision taken by the Executive Director on 26 October 2020 was limited to one line: “After careful review of the GBA report [...], I accept the recommendations of the Panel”. This entails that WHO/UNAIDS

recognized and acknowledged the finding of violation of its duty of care made by the GBA.

5. In his first plea, the complainant maintains that much more than what the GBA noted in its report justified a finding that UNAIDS violated its duty of care towards him. He advances four arguments in this respect.

The complainant first contends that contrary to what the GBA stated, the Organization did not investigate promptly the allegations against him. In this regard, the record indicates that the complainant was placed on special leave with full pay on 14 September 2018, and that he was then informed that this was being done particularly “in order to safeguard and facilitate the process surrounding the clarification of allegations of misconduct made by [Ms D.-M.] against [him]”. On 20 September 2018, the Executive Director asked WHO/IOS to conduct a “formal independent investigation” of the allegations as soon as possible. However, the letter of 28 February 2019 informing the complainant that the matter was now closed and that he was authorized to resume his functions from 1 March 2019, indicated that WHO/IOS had only interviewed Ms D.-M. on 5 February 2019. The WHO/IOS report concluding that the latter’s allegations were unsupported by *prima facie* evidence and did not merit further investigation was submitted on 22 February 2019.

The Tribunal agrees with the complainant that the five-month duration of the WHO/IOS preliminary review was excessive and unreasonable, and that the Organization did not investigate promptly the allegations against him. The allegations made were serious; they related to alleged sexual harassment and depicted the complainant as a sexual predator and skirt chaser. By the time the preliminary review was requested from WHO/IOS on 20 September 2018, the matter had become public because of the email with the “talking points” that was sent to all staff on 13 September 2018 and the press release that was issued by UNAIDS on 14 September 2018. Clearly, time was of the essence, and it was urgent to proceed rapidly, in the interests of both justice in general and the interests of the complainant in particular.

The Organization's duty of care towards him required that the preliminary review proceed without delay. Indeed, at that time, the complainant's special leave was expected to terminate on 31 October 2018.

As the complainant rightly put it, there were no reasons why the interview of Ms D.-M. and the completion of the WHO/IOS report could not have been done within this timeframe. Yet, it did not happen. No explanations were offered to justify why it took until 5 February 2019 for WHO/IOS to interview Ms D.-M. Once she was interviewed, the report recommending that the matter be closed indeed followed in barely 17 days. Five months to complete a preliminary review in a matter such as the instant one was unacceptable. In its report, the GBA itself noted that UNAIDS was aware that the time taken for preliminary reviews should be shorter.

The Tribunal finds the answers offered in this regard by the Organization unconvincing. The fact that there was no formal complaint made, that Ms D.-M. was not a staff member, and therefore not subject to internal rules, or that she could not be compelled to accept to be interviewed are insufficient to relieve the Organization from abiding with its well-recognized duty of care towards its officials in circumstances such as the present. In Judgment 4039, consideration 16, the Tribunal relevantly recalled the following in the context of an investigation regarding particularly harassment situations:

“With regard to the length of the investigation in particular, the Tribunal pointed out in Judgment 3295, under 7, that an organisation must investigate allegations of misconduct in a timely manner both in the interests of the person being investigated and the organisation. These interests include, among other things, safeguarding the reputations of both parties and ensuring that evidence is not lost. Consequently it must be found that the delay in conducting the investigation caused the complainant moral injury which must be redressed (see, in this connection, Judgment 3064, under 11).”

6. Second, the complainant contends that in addition to disregarding the confidentiality of the preliminary review process, UNAIDS violated its duty of care towards him by providing inaccurate

and misleading information to both the staff members and the press about the situation.

Regarding this, the Tribunal observes, firstly, that the email with the “talking points” circulated on 13 September 2018 left little doubt that the UNAIDS staff member to whom it referred was indeed the complainant. As well, by alluding to the fact that the Organization had a zero-tolerance policy on sexual harassment, it was clearly publicly linking the complainant to this kind of behaviour. Secondly, the record shows that the Organization made similar references and allusions in its press release of 14 September 2018. Later on, in November 2018, in her interview to a major press agency, a UNAIDS spokesperson referred to the complainant having been placed on administrative leave over sexual harassment allegations when, in fact, the complainant had been placed on special leave due to general allegations of misconduct pursuant to the notification that he had received from the Organization on 14 September 2018.

The Tribunal agrees with the complainant’s assertion that the circulation of this incorrect, misleading but nevertheless detailed information, both internally and to the press, was inappropriate and in violation of the Organization’s duty to refrain from conduct that may harm the dignity and reputation of its officials. In Judgment 4448, consideration 9, the Tribunal recalled this principle as follows:

“The complainant’s claim for compensation for alleged defamation is based on an organisation’s ongoing duty not to cause such injury to present as well as former staff members. This accords with the Tribunal’s case law in consideration 46 of Judgment 3613 that international organisations are bound to refrain from any type of conduct that may harm the dignity or reputation of their staff members and that this duty, which flows from the general principles governing the international civil service, is also applicable as a matter of course to former staff members of an organisation (see also Judgment 2861).”

These communications were a serious affront to the complainant’s name, professional reputation and dignity, reflecting adversely on his person while infringing on his privacy.

7. Third, still on the violation of the Organization's duty of care, the complainant further argues that UNAIDS failed to take the necessary concrete measures to ensure a prompt correction of the inaccurate public statements made internally and to the press. On this point, the Tribunal observes that even though the GBA report identified a fault of UNAIDS and that the latter acknowledged its violation of its duty of care in the impugned decision, the actions taken to remedy the harm done, considering the nature of its communications and press release, were insufficient and less than what would have been expected from an international organisation. Having affected, albeit not intentionally or maliciously, the complainant's reputation and image through what were incomplete and misleading public statements, it was reasonable to expect the Organization to redress the situation through similar public means, which it refused to do. The Tribunal considers that UNAIDS' mere removal of the inaccurate press release from its website and its action to correct its spokesperson's inaccurate characterization of the nature of the complainant's leave to the press agency were insufficient in this respect. More required to be done in that context.

8. The Tribunal cannot, however, accept the complainant's fourth and last argument that UNAIDS violated its duty of care by placing him on special leave with full pay or that the subsequent extensions thereof were invalid. Pursuant to Staff Rule 650.2, the Executive Director had the authority to place a staff member on special leave with full pay if he considered that it was in the interest of the Organization to do so. There were no other criteria in the applicable provisions limiting the exercise of this discretion by the Executive Director. To suggest that the Executive Director should have given priority, at that time, to the complainant's interests and the protection of his reputation over those of the Organization would invite the Tribunal to second-guess what was otherwise a reasonable exercise of discretion by the executive head of the Organization faced with the situation that he then had to manage.

This last element did not entail, in the Tribunal's view, a violation of UNAIDS' duty of care.

9. All in all, the Tribunal thus finds that this first plea is well-founded on three of the four bases raised by the complainant and that UNAIDS' violation of its duty of care towards the complainant was, in the present circumstances, much more serious than a mere infringement of the confidentiality of the preliminary review process.

10. Regarding the complainant's second plea about the remedies available in the circumstances, the complainant submits, first, that he is entitled to specific performance in the form of the issuance by UNAIDS of a new press release and, second, that his compensation in moral damages should be higher.

11. To begin with, on this second plea, it is convenient to recall that in relation to the issuance of a new press release, the relief claimed by the complainant in his complaint form is that:

"1. [WHO/UNAIDS] publish a press release to clear the Complainant's name, the contents of which is to be agreed to by the Complainant in advance and take any other appropriate measures to further protect the Complainant's reputation and family honour, which other measures can include any or all of the following:

a) send a communication to relevant news media, the contents of which is to be agreed to by the Complainant in advance;

b) authorize the Complainant to send to relevant media a copy of the 28 February 2019 communication regarding the outcome of the [WHO/IOS] investigation [...] along with a request that the media remove articles from its website(s) regarding the allegations in question and/or publish a retraction;

c) authorize the Complainant to send a communication to relevant media, citing the 28 February 2019 communication [...] requesting that the media remove the articles regarding the allegations in question and/or publish a retraction;

d) any other measure to protect the Complainant from further damages to his reputation which the Tribunal considers appropriate." (Emphasis added.)

12. With respect to the claims for relief underlined above, the Tribunal has often recalled that such claims are too vague to be receivable (see, for example, Judgments 4818, consideration 13, and 4602, consideration 8). In addition, the claims aimed at third parties, in

the present case the request that media be ordered to remove articles or to publish retractions, go well beyond the Tribunal's competence. As for the claim that the Tribunal authorize the complainant to take action himself, without deciding whether such action is justified in the circumstances, its necessity is not established. These claims will all be dismissed.

13. Turning to the claim for the issuance of a new press release, which the GBA concluded it should not recommend, even though two of its members considered that it should have been done, the complainant argues that it is the only means to properly remedy the harm inflicted upon him and that the Tribunal has the competence to order specific performance by the Organization consisting precisely in the issuance of such press release.

14. The Tribunal case law has it that, as a general rule, the Tribunal does not have the competence to issue injunctions against international organisations (see, for example, Judgments 5057, consideration 22 (order to institute disciplinary proceedings), 5045, consideration 19 (order the issuance of a directive), 4802, consideration 2 (order to publish an internal decision), 4065, consideration 9 (order to issue an official announcement to clear reputation), 4039, consideration 17 (order to provide apologies), 3506, consideration 18 (order to instruct an organisation to do something), and 2626, consideration 13 (order to sanction staff members)). When addressing this issue recognizing that its competence in this regard is limited, the Tribunal indeed refers to the expression of not having the competence to "order injunctions of this kind" (see, for example, Judgment 5045, consideration 19).

But in a situation like this one, where the context involves a clear defamatory statement circulated by an international organization and affecting a complainant's honour and reputation, the Tribunal is prepared to proceed on the basis of the approach in Judgment 2720, considerations 17 and 18. In that judgment, the Tribunal emphasized the following regarding its authority to order the publication of communications by an international organization to its staff, given the

organisation's continuous obligation to take steps to remedy the injury caused to a complainant as a result of the violations of its duty of care:

“17. The complainant also requests the Tribunal to order the ITU to send a new e-mail to all staff, after delivery of the present judgment, retracting the content of the e-mail circulated on 26 July 2006. As the circulation of such an e-mail does indeed appear to be the only way of ensuring that the present judgment fully serves the purpose of safeguarding the complainant's honour and reputation vis-à-vis the ITU staff, the Tribunal considers that, under the circumstances, this request should be granted. The Union was under a continuous obligation, from the date of circulation to its staff of the defamatory e-mail of 26 July 2006, to take steps to remedy, as far as possible, the injury caused to the complainant. It is therefore appropriate that the Tribunal, acting under Article VIII of its Statute, should order the performance of that obligation.

With a view to ensuring, in particular, that the measure thus ordered cannot give rise to a new dispute between the Union and the complainant, it is hereby stipulated that this measure shall consist in the circulation to all staff, by electronic means, within a week of the delivery of the present judgment, the text of the said judgment, together with a brief note drafted on the ITU's initiative. The note shall simply state, without any comment and in absolutely neutral terms, that the judgment is being circulated further to the e-mail of 26 July 2006 circulated to all staff concerning Judgment 2540.

18. The Tribunal does not consider, on the other hand, that the complainant's request to be given the right to circulate an e-mail to all ITU staff in response to that of 26 July 2006 should be granted. The injury to the complainant's honour and reputation will be adequately redressed by the circulation of the present judgment, in accordance with the terms set forth in the foregoing consideration, and by the award of damages to be paid by the Union. Besides, the Tribunal notes that the circulation of such an e-mail by the complainant would undoubtedly perpetuate the dispute that has developed between him and the organisation, which would not really be in the interest of either of the two parties.”

(See also, for similar examples regarding the competence of the Tribunal to order the specific performance of similar obligations, Judgments 3107, consideration 10, 2879, consideration 23, 2861, consideration 93, and 2751, consideration 11.)

15. The Tribunal considers that this is apposite to the present situation. The press release issued by UNAIDS on 14 September 2018 caused prejudice to the complainant's honour and reputation. Similarly

to the situation that prevailed in Judgment 2720, the Organization was, pursuant to its duty of care, under a continuous obligation to take steps to remedy, as far as possible, the injury it caused to the complainant. The Tribunal has the authority to order specific performance of such an obligation, bearing in mind that the nature of the specific performance that is to be ordered must be clear and unambiguous so that it does not lead to further disputes between the parties.

To that end, the complainant's request that the content of this press release be first approved by him may only lead to unnecessary difficulties. This should be avoided. The order of the Tribunal in this respect should rather be kept as simple as possible. This new press release should only indicate that pursuant to the judgment delivered by the Tribunal in this case, WHO/UNAIDS was ordered to issue a new press release confirming that on 28 February 2019, the Organization acknowledged that, further to a preliminary review, the allegations made against the complainant, to which its prior press release of 14 September 2018 referred, were found to be unsupported by *prima facie* evidence and not to merit any further investigation. This new press release should be communicated in the same manner and to the same recipients as the prior press release of 14 September 2018 and should also be published on the website of the Organization.

This, in the Tribunal's view, is the proper way to vindicate the harm caused to the reputation of the complainant because of the Organization's violations of its duty of care towards him. Given that press statements publicly accessible on mediums like the Internet end up remaining available for very long periods of time after their initial publication, issuing such an order in the circumstances remains appropriate even though the relevant events go back many years.

The Tribunal observes that in the present case, the Organization states in its pleadings that it does not contest the competence of the Tribunal to order specific performance. It does not argue either that it would now be useless to issue a new press release due to the passage of time. It rather focuses on the fact that to do so would not be possible or advisable because it would not be in the best interests of the Organization,

and such issuance would even pose an adverse risk to the reputation of UNAIDS.

However, there is a fundamental difficulty with this last assertion. It reflects an unfortunate misunderstanding of the purpose of the remedy sought. The objective is to prioritize the interests of the complainant in finding a proper remedy for the violation of the Organization's duty of care, not to ascertain what would be the least problematic for UNAIDS.

16. Regarding the monetary compensation, the complainant maintains that the amount of 4,000 United States dollars paid to him was insufficient and that it should be increased by a further amount of 44,500 Swiss francs. The Tribunal considers that it is obvious that publicly associating an official with false and unfounded allegations of sexual harassment can cause serious and sometimes irreparable harm to a person's reputation and dignity. Still, it is never an easy task to determine what would be a proper compensation for this kind of damage. The Tribunal finds that the GBA's assessment of the complainant's damages, accepted by the Executive Director in the impugned decision, was significantly low given the nature of the harm and the extent of UNAIDS' violation of its duty of care that ended up being more extensive than what the GBA had determined.

In the present circumstances, the Tribunal is of the view that the moral injury suffered by the complainant will be fairly redressed by awarding him an additional indemnity of 25,000 Swiss francs (see, for example, Judgment 3613, considerations 46 to 51).

17. Regarding the complainant's claim for a further amount of 16,000 Swiss francs in legal "fees", it is not clear from the complainant's pleadings whether this concerns the internal appeal process, the present proceedings, or both. In its own pleadings, the Organization understands this claim as pertaining to the granting of costs in the present proceedings.

Inasmuch as this claim concerns the internal appeal process, the Tribunal recalls that according to its consistent precedent, such costs may only be awarded under exceptional circumstances (see, for example,

Judgments 4554, consideration 8, and 4392, consideration 13, and the case law cited therein). There are no circumstances in the present case that would justify such an award.

18. Inasmuch as this claim relates to the present proceedings, as he succeeds in his complaint, the complainant is entitled to the award of costs, which the Tribunal sets at 10,000 Swiss francs.

DECISION

For the above reasons,

1. WHO/UNAIDS shall issue a press release in accordance with what is indicated in consideration 15 above, within thirty days of the delivery of this judgment.
2. WHO shall pay the complainant moral damages in the sum of 25,000 Swiss francs.
3. WHO shall also pay him costs in the sum of 10,000 Swiss francs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 5 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.