

S. (No. 3)

v.

WHO

141st Session

Judgment No. 5156

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms C. E. S. against the World Health Organization (WHO) on 21 April 2023 and corrected on 27 June 2023, WHO's reply of 23 October 2023, the complainant's rejoinder of 22 January 2024 and WHO's surrejoinder of 22 April 2024;

Considering the information provided by the parties, at the Tribunal's request, on 2 and 3 July 2025;

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 her dismissal for misconduct.

The complainant, who was born in 1964, joined WHO in 1998. In 2010, she was appointed as Director of the Division of Information, Evidence, Research and Innovation (DIR) in WHO's Regional Office for Europe (EURO) in Copenhagen, Denmark. At the material time, she was holding a continuous appointment and her grade was D-1.

By memorandum dated 23 October 2018, the Office of Compliance, Risk Management and Ethics (CRE) referred to WHO's Internal Oversight Services (IOS) allegations of "gross mismanagement and

waste of WHO human resources”, “systematic humiliation and manipulation of staff to pressurize targeted staff into leaving or resigning”, “fabrication of evidence to construct negative performance appraisals” and “intimidating staff by expressing polarizing views and fostering conflict in a professional setting”, involving the complainant. The allegations were made by a staff member in EURO, Ms P., who also reported experiencing retaliation from the complainant. CRE indicated that, in July 2017, the Staff Association had received similar allegations from over 18 people in the same division, all expressing concerns about a pattern of harassment by the complainant over time, and fear of formally reporting it. CRE requested IOS to investigate the allegations and recommended protecting the EURO staff member who reported them from retaliation, noting that she was supervised by the complainant. On 26 November 2018, CRE sent an email to IOS, stating that after a preliminary review of the allegations of retaliation by Ms P., it found them to be supported by *prima facie* evidence.

On 27 March 2019, the complainant was placed on administrative leave with pay pending determination of misconduct, pursuant to Staff Rule 1120. On 29 March 2019, the Director, Human Resources Department (HRM) advised the complainant that she would no longer have access to her WHO email address during her administrative leave. That same day, the complainant went on certified sick leave.

By memorandum dated 7 June 2019, IOS notified the complainant that she was the subject of an investigation. The memorandum listed three allegations concerning: (i) retaliation; (ii) abuse of authority; and (iii) the existence of a similar pattern of abusive conduct towards several staff members under the complainant’s supervision.

In consultation with the Staff Health and Wellbeing Services (SHW) and based on the advice of the complainant’s treating physician that she was fit to attend interviews, IOS began an interview with the complainant on 10 June 2019. At the beginning of the interview, the IOS investigator informed the complainant that Ms P. was the staff member who had reported the allegations. IOS further interviewed the complainant on 11, 12, 19, 20 and 21 June 2019, after which the interview was interrupted before it could be completed.

On 18 June 2019, IOS notified the complainant of additional allegations that she may have breached the confidentiality of the investigation.

On 24 June 2019, the complainant was provided with an external drive containing the data copied from her WHO-issued laptop and her WHO emails, “for the sole purpose of enabling [her] to review and submit information in relation to the ongoing investigation against [her]”. However, the complainant faced issues in accessing the data. She eventually gained access on 29 July 2019.

Following further advice from the complainant’s medical doctors that she was only able to answer questions in writing, IOS sent a questionnaire to the complainant via email on 15 December 2019. However, in January 2020, IOS was informed that new advice from the complainant’s medical doctors also barred her from answering any questions in writing.

On 16 December 2020, IOS issued its investigation report. The investigation included the review of documentary evidence, such as the complainant’s official email records and interviews with 16 persons, including the complainant and Ms P. IOS indicated in its report that, before the complainant’s interview was interrupted, it was able to discuss with her the allegations concerning her conduct towards Ms P. around and after July 2018, as well as her alleged broader pattern of conduct in managing DIR. However, it did not address with the complainant the allegations regarding her conduct towards Ms P. prior to June-July 2018. Consequently, IOS stated the following: “The present report will focus only on those allegations which IOS was able to fully discuss with, seek comments from, and present relevant evidence to [the complainant] [...] Any other residual aspects may be addressed in a subsequent report, if and when [the complainant] should become able to complete her interview with IOS.” In its report, IOS concluded that there was sufficient evidence to support that the complainant may have engaged in misconduct as defined in Section 110.8 of the Staff Rules and that the seriousness of her conduct was compounded by her role as a WHO senior manager as well as by her experience as harassment focal point for EURO.

By letter dated 21 January 2021, the Regional Human Resources Officer, EURO, informed the complainant that she had been charged with misconduct on four counts, based on the findings and conclusions set out in the IOS report. The complainant was given 21 calendar days to reply to the charges. She provided her response on 11 February 2021.

On 24 September 2021, the Director-General notified the complainant of his conclusion that she had engaged in misconduct. He decided to impose the disciplinary measure of dismissal with one month's notice and indemnity, as specified under Staff Rule 1075.1. The Director-General stated that, in determining the appropriate disciplinary measure to be imposed, he considered "the gravity of [the complainant's] misconduct [...] along with [her] position as a senior manager", "[her] achievements for global health while working for WHO", as well as her seniority and long experience working in the United Nations (UN) system. The complainant filed an appeal with the WHO Global Board of Appeal (GBA), directed against the disciplinary decision.

On 21 November 2022, the GBA issued its report on the complainant's appeal, as well as a detailed analysis of its findings, attached as an annex to the report. The GBA concluded that, during the investigation, WHO breached the complainant's due process in several ways. However, the GBA considered that the evidence collected established the complainant's misconduct beyond reasonable doubt, allowing the Director-General to sanction the complainant with dismissal, based on the IOS findings. The GBA recommended to allow the appeal in part and to award the complainant moral damages in the amount of 5,000 Swiss francs, along with reimbursement of her legal fees up to a maximum of 1,000 Swiss francs, subject to the provision of invoices and proof of payment. Additionally, the GBA made three general recommendations, one of them referring to possible breach of confidentiality by another staff member.

On 21 January 2023, the Director-General notified the complainant that he had decided to accept the GBA's recommendations. This is the impugned decision.

The complainant asks the Tribunal to set aside the disciplinary measure and to order her reinstatement. She seeks compensation amounting to 640,000 Swiss francs, equivalent to four years of salary. Additionally, she claims 100,000 Swiss francs as moral damages. Lastly, she asks for costs, payment of interest and coverage of healthcare expenses not included in the staff health insurance.

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

CONSIDERATIONS

1. The complainant impugns the 21 January 2023 decision whereby the Director-General, endorsing the GBA's recommendations issued on 21 November 2022, allowed in part her internal appeal against the 24 September 2021 decision whereby, based on the conclusion that the complainant had engaged in misconduct, the Director-General imposed on her the disciplinary measure of dismissal with one month's notice and indemnity, pursuant to Staff Rule 1075.1. The impugned decision upheld the disciplinary measure but awarded the complainant moral damages and costs in the amount recommended by the GBA.

The disciplinary measure imposed on the complainant was based on four counts, set forth in the January 2021 letter of charges, which drew upon findings from the IOS report of 16 December 2020:

Count 1

“[The complainant] engaged in a pattern of serious unjustified adverse and retaliatory behaviour against Ms [P.] [...] after she sought assistance in July 2018 from the Office of the Ombudsman concerning allegations of harassment by [the complainant]. This behaviour was exhibited through: [the complainant's] consistent usage of demeaning and offensive language in reference to Ms [P.]; providing unfair feedback to the then Regional Director regarding [Ms P.'s] work, performance and behaviour, including unprofessional and insulting language; circulating damaging information against Ms [P.], including on her mental state or mental health, to her peers as well as to the then Regional Director; circulating false information concerning Ms [P.'s] involvement in investigative or disciplinary proceedings by the Organization to colleagues within and outside DIR, as well as to individuals outside WHO; threatening negative administrative

action against Ms [P.], such as negative performance reviews of dismissal *[sic]*, in communication with her peers; on at least one occasion, using inappropriate threatening language in reference to Ms [P.]; improperly seeking to obtain information concerning possible misbehaviour by Ms [P.] from one of her supervisees, Mr [Fe.], including directly and through a peer of Ms [P.'s], Dr [Ga.]; circulating gossip concerning an intimate relationship between Ms [P.] and her then assistant Ms [Fr.], and improperly divulging confidential information regarding Ms [P.'s] access to the Office of the Ombudsman and her complaint to [CRE]. In [doing] so, [the complainant] created a hostile working environment for [Ms P.] within and outside of DIR.”

Count 2

“[The complainant] abused [her] authority in relation to the management of Ms [Fr.], then [Health Information, Monitoring and Analysis (HMA)] Programme Assistant, and her transfer out of the DIR after July 2018 to the Division of Health Emergencies and Communicable Diseases in EURO, by giving instructions to remove responsibilities from Ms [Fr.], before the reassignment was finalised and instructing Dr [Ga.] to ignore [Ms Fr.'s] concerns; using inappropriate and unprofessional language when discussing the matter with other DIR staff, and by divulging sensitive information concerning Ms [Fr.'s] marital situation and residence status in Denmark, including to Ms [Gr.], Programme Manager, Languages who [the complainant] knew was in a potential conflict of interest but was allowed to sign the memorandum concerning Ms [Fr.'s] transfer out of division on [the complainant's] behalf; and [the complainant] unduly forwarded damaging information concerning unconfirmed allegations of misconduct to Ms [Fr.'s] new supervisor.”

Count 3

“[The complainant] engaged in a long-standing pattern of similarly abusive conduct towards other DIR staff identified in the investigation report which were targeted by [the complainant] (the ‘targeted staff’) in the course of [her] tenure as Director DIR. More specifically, IOS noted several similarities between the conduct in which [the complainant] engaged against Ms [P.] and the behaviour [the complainant] displayed towards several targeted staff including Dr [H.], former Programme Manager eHealth and Innovation; Dr [D.], Former Programme Manager, HMA; Mr [R.] former Technical Officer and acting Programme Manager, HMA; and Dr [N.] former Programme Manager, Knowledge Management, Evidence and Research for Policy-making (KER) which suggests that these actions [were] part of a consistent practice in [her] management of staff and of the DIR. This behaviour was exhibited through: a sudden and dramatic shift in [her] assessment of, and behaviour towards, the targeted staff, which was not

justified by corresponding deterioration in their performance or other objective reasons; using disparaging language to refer to the targeted staff and their work in email correspondence and conversations with their peers; unduly involving other DIR staff in managing the purported conflict with the targeted staff including by requesting that they provide information and evidence of misbehaviour against them; circulating unfounded or unverified allegations of misbehaviour against the targeted staff; improperly discussing confidential information concerning them with their peers, often in disparaging terms, and extending abusive behaviour to individuals who were perceived as close to the targeted staff. In doing so, [the complainant] created an unhealthy, intimidating and overall negative environment in DIR which resulted in high turnover and frequent recourse to extended sick leave by staff.”

Count 4

“IOS also found that [the complainant] breached confidentiality of the administrative and investigative proceedings related to the present case by sharing confidential information concerning [her] interview with IOS and suggesting that other staff might be interviewed too, or that they might contact [her] despite being aware of the confidential nature of the ongoing investigation and that the staff may be potential witnesses.”

2. It is noteworthy to recall that the GBA identified several procedural errors in the conduct of the IOS investigation, but it did not deem these flaws to be of sufficient gravity to justify setting aside the disciplinary decision. In the GBA’s view, despite those errors, the evidence available was sufficient to establish the alleged misconduct beyond reasonable doubt. The GBA specifically identified the following breaches of due process:

- (i) IOS wrongfully referred to Dr H. in its findings on the complainant’s use of offensive and demeaning language, without having disclosed the related allegation to the complainant;
- (ii) the Organization failed to properly discharge its duty to ensure the complainant had an opportunity to test the evidence against her by delaying her access to her files and emails; and
- (iii) IOS did not provide reasons for its decision not to interview certain witnesses identified by the complainant, and the Administration subsequently failed to provide grounds supporting this decision during the proceedings before the GBA.

The GBA recommended that the Director-General award the complainant 5,000 Swiss francs for moral damages arising from the procedural flaws in the process and reimburse her legal fees up to a maximum of 1,000 Swiss francs, subject to the provision of invoices and proof of payment.

The GBA also recommended future general actions to be undertaken as follows:

- (i) IOS ensure that notices of allegations be given sufficiently in advance;
- (ii) the alleged breach of the confidentiality of the investigation by the Director, Administration and Finance, EURO, be properly investigated; and
- (iii) IOS ensure not using words that are subjective and that do not rest on generally accepted definitions, which may compromise the objectivity that is required of IOS in performing its fact-finding exercise.

The Deputy Chair of the Panel further recommended that the Organization ensure that, should the reasons justifying the withholding of the information cease to exist, an unredacted version of the transcript of Ms Fr.'s interview be promptly communicated to the complainant in view of the potential relevance that the information may have to her defence and that any challenge the complainant may wish to raise in relation to this information be duly addressed by the Administration.

3. The complainant identifies a number of procedural flaws in the IOS investigation and in the subsequent disciplinary proceedings which, in her view, amount to a breach of due process. The myriad of arguments can be summed up as follows:

- (i) she was interviewed by IOS only in June 2019, approximately three months after being placed on administrative leave and having her access to WHO e-services discontinued;

- (ii) she was informed of the allegations against her only a few days before she was interviewed by IOS, she was not informed of the detailed allegations made against her and she was not fully aware of the allegations when being interviewed by IOS;
- (iii) at the time of her interview, her access to WHO e-services was still banned; when she was eventually granted access to her files and emails, her interview had been suspended and never resumed, and, as a result, her access to her files and her emails was not only belated, but also useless;
- (iv) she was not provided with the transcripts of her interview until IOS completed its investigation report;
- (v) during the time which elapsed between the suspension of her interview and the conclusion of the IOS investigation, she was denied written communications with IOS, and when IOS eventually submitted its questions in writing to the complainant, her medical condition no longer permitted her to participate in the process even in writing; IOS wrote in the investigation report that her interview was suspended in June 2019 due to her poor health, when the actual reason was the investigator's holiday;
- (vi) she was not provided with the content of witness interviews during the investigation and she was not permitted to offer countervailing evidence during the investigation, she received the transcripts only more than two years later, together with the IOS report;
- (vii) she was never provided with the unredacted version of the transcript of Ms Fr.'s interview; she reiterates before the Tribunal her request for access;
- (viii) she was never allowed to comment on the allegations made by one witness, Dr H., identified as an alleged victim of harassment, upon which the IOS findings were based;
- (ix) she provided IOS with the names of six witnesses, none of whom were interviewed by IOS;

- (x) the IOS findings improperly relied on the content of her WHO emails which involved private communications with other staff, in the absence of detailed rules governing the use of the WHO e-services for private correspondence;
- (xi) IOS and the Organization committed several breaches of confidentiality including informing third parties that she was under investigation; WHO attempted to influence her doctor to compel her participation in an IOS interview and this amounted to a breach of medical confidentiality; and
- (xii) despite her doctor's objections, she was given only 21 days to provide her comments on the investigation report, when asked to comment on the letter of charges.

4. The Tribunal observes that, in advancing these contentions, the complainant does not assert a breach of specific staff rules, but she relies on the Tribunal's case law and on the general principles of due process and the duty of care. The Tribunal further notes that neither the WHO/IOS internal document entitled "Investigation Process" nor the WHO Staff Regulations and Staff Rules, in the part pertaining to disciplinary proceedings, prescribe a detailed timeline of the investigatory process that precedes the initiation of disciplinary action. Additionally, the statutory framework does not specify the requisite level of detail for information to be provided to staff prior to their interview in an investigation process. They do not even address the issue of if and how to conduct an interview when the staff concerned have a medical condition which precludes their participation either in person or in writing. In the absence of specific statutory provisions, these matters must be addressed by the Tribunal by reference to the general principles of the duty of care and due process, as developed through the Tribunal's jurisprudence.

At this juncture, it is useful to recall the relevant case law, as follows:

- (i) although it would be preferable to notify the persons concerned that they are to be the subject of an investigation prior to the start of such investigation, except where this would be liable to

compromise the outcome of the investigation, such advance notice is not a requisite element of due process (see Judgments 4310, consideration 6, and 3295, consideration 8); it is sufficient that the accused staff member be informed of the allegations at the beginning of the interview (see Judgments 4770, consideration 4, 4310, consideration 6, 4237, consideration 10, 4106, consideration 9, and 3200, consideration 8); there is no principle in the Tribunal's case law stating that a staff member must receive detailed information about the allegations prior to the investigation interview (see Judgment 4106, consideration 9);

- (ii) before adopting a disciplinary measure, an international organisation must give the staff concerned the opportunity to defend themselves in adversarial proceedings (see Judgments 5003, consideration 5, and 3875, consideration 3). The right to make a defence is necessarily a right to defend oneself before an adverse decision is made, whether by a disciplinary body or the deciding authority (see Judgments 4832, consideration 28, 4343, consideration 13, and 2496, consideration 7). Before disciplinary proceedings are undertaken, the investigator has the duty to ascertain all relevant facts and the accused person must be given the benefit of the doubt (see Judgments 5003, consideration 5, 4697, consideration 12, 4491, consideration 19, and 4011, consideration 9). This implies that the investigator has to assess not only evidence against the accused person, but also exculpatory evidence (see Judgments 5003, consideration 5, 4456, considerations 9 and 17, and 4362, consideration 12), and, before this, must allow the accused person to provide exculpatory evidence (see Judgment 5003, consideration 5);
- (iii) the disclosure of the investigation report to the subject of the allegations of harassment must be balanced against the need to respect the confidential nature of some aspects of an inquiry, particularly that of the witness statements gathered in the course of the inquiry (see Judgment 3640, considerations 19 and 20); and

- (iv) the failure to respect confidentiality in an investigative process, even if it were proven, does not amount to a conclusive flaw which would justify the setting aside of the disciplinary decision. The breach of confidentiality, if proven, might only arguably entitle the complainant to moral damages (see Judgment 4858, consideration 14).

5. The complainant was first contacted on 3 June 2019 by an IOS investigator to schedule an interview, and subsequently received a memorandum from IOS on 7 June 2019, notifying her of the allegations. Her interview commenced on 10 June, and continued on 11 and 12 June, when it was suspended. The interview then resumed on 19, 20, and 21 June. IOS made efforts to accommodate her medical condition throughout this process. The interview conducted in Copenhagen on 10, 11, and 12 June was specifically arranged by IOS to adhere to the parameters set by the complainant's treating physician. These parameters included conducting the interview in person, scheduling sessions in the afternoon, limiting the interview duration, and providing frequent breaks. At the complainant's request, IOS also made an exceptional allowance for her husband to be present during the interview for support.

The complainant's interview was ultimately suspended on 21 June 2019 and was never resumed. Following further advice from her treating physicians, indicating that she was only able to answer questions in writing, a questionnaire was dispatched to her on 15 December 2019. However, in January 2020, IOS was informed that the complainant was unable to respond even in writing. At this juncture, IOS resolved to restrict its investigation to those matters already discussed with the complainant. It is noted that the witnesses identified by the complainant were never interviewed by IOS.

The letter of charges provided the complainant with the IOS report and all its annexes.

6. In light of the foregoing, the Tribunal concurs with the GBA's opinion that the investigative process is not vitiated by a fundamental breach of due process that would affect the conclusion that misconduct occurred beyond reasonable doubt, although the GBA detected some flaws in the investigation, which the GBA has qualified as "procedural flaws".

7. The complainant's arguments listed in consideration 3, under (i), (ii), (iii), and (iv), are unfounded.

The complainant was duly informed of the allegations against her prior to the commencement of her interview, and the memorandum of 7 June 2019 conveying these allegations was sufficiently detailed. Moreover, as recalled in consideration 4 above, there is no principle in the Tribunal's case law stating that a staff member must receive detailed information about the allegations prior to the investigation interview (see Judgment 4106, consideration 9).

Even though the interview began on 10 June 2019, i.e. three days after she was informed of the allegations, it is noted that initial contact for scheduling the interview was made earlier, on 3 June 2019. Furthermore, her interview did not take place only on 10 June, but was extended over several days, specifically 11, 12, 19, 20, and 21 June. It is acknowledged that, at the time of her interview, the complainant had not yet been granted access to her emails and files, and that she was not provided with the transcript of her interview until the conclusion of the investigation, thus, she was not granted the opportunity to review or rectify her interview in light of the content of her emails. However, she had this opportunity at least when she was provided with the IOS report and its annexes, together with the letter of charges, and, ultimately, before the GBA. The complainant has failed to demonstrate, either in her comments on the letter of charges, or before the GBA, or before the Tribunal, that the transcript of her interview was inaccurate or required rectification based on the content of her emails. Indeed, in the comments on the letter of charges, in contending that the complainant was not provided with the transcript of her interview in due time, her counsel noted "As you can see further below, we have serious concerns

about the transcripts themselves”, but such concerns were, in fact, expressed solely in relation to witness interviews, and not in relation to the content of the complainant’s own interview.

8. The complainant’s arguments listed in consideration 3, under (v), are unfounded.

The complainant’s interview was suspended on 21 June 2019 and was never resumed. It is acknowledged that the verbatim record of the 21 June 2019 interview provides no evidence that the interview was suspended due to the complainant’s medical condition. However, there is no legal flaw in the suspension of the interview. After 21 June 2019, there were no further opportunities to interview the complainant in person. There are no statutory rules compelling an investigator to delay an investigation until the subject of the investigation, having health issues, is fully capable of participating. Due process mandates that the health condition of the staff concerned be taken into consideration, striking a balance between the right to defence of the staff concerned and the need for an expeditious investigation in cases of harassment (see Judgments 4065, considerations 7 and 8, and 4064, considerations 8 to 10). In Judgment 4064, considerations 8 and 9, the Tribunal held that, in the absence of statutory rules or proven practice providing guidance on how the requirement of due process was to be fulfilled where a staff member who is accused of harassment is on certified sick leave, and given the duty of an organization to investigate harassment complaints, it was reasonable that it could ask a staff member who was on sick leave to comment upon an investigation report if doing so would not have exacerbated the illness which occasioned the grant of sick leave and if the staff concerned was fit to do so, and concluded that, in the circumstances of the case, the organization took reasonable steps to discharge its duty to accord due process to the complainant, as well as its duty of care and its duty to be fair to him, while it sought to discharge its duty to implement its Policy on the Prevention of Harassment. Conversely, in Judgment 4065, considerations 7 and 8, the Tribunal set aside a disciplinary decision due to a failure to interview the accused person, who was on sick leave. However, in that specific case, the organisation had provided misleading information that the interview

was not mandatory, resulting in no interview whatsoever; furthermore, the disciplinary decision was issued only three days after the organisation had been informed that the staff member concerned was hospitalized. In the present case, the Tribunal is satisfied that IOS struck a proper balance, considering that the complainant's interview was accommodated to her needs, and extended over several days. IOS made several attempts to afford the complainant the opportunity to answer questions in writing. Once it became clear that her medical condition prevented her from even responding in writing, IOS opted to limit the scope of the investigation to "those allegations which IOS was able to fully discuss with, seek comments from, and present relevant evidence to [the complainant]". As the investigation primarily focused on allegations discussed with the complainant before her interview was suspended, no breach of due process occurred in this regard.

However, the GBA considered that the investigative process and the subsequent disciplinary decision were flawed to the extent that they also relied upon the testimony of Dr H., whose allegations had not been presented to the complainant. This will be addressed in consideration 11 below.

9. The complainant's arguments listed in consideration 3, under (vi), are unfounded.

There are no rules that oblige an investigator to provide the subject of an investigation with witness statements during the course of the investigation itself. It is sufficient that the staff concerned be informed of the allegations during their interview and that they are provided with the content of the witness statements, together with the investigation report, at the conclusion of the investigation.

10. The complainant's arguments listed in consideration 3, under (vii), are unfounded.

The GBA thoroughly addressed the complainant's request to be provided with an unredacted version of Ms Fr.'s testimony transcript and ultimately concluded that WHO had valid grounds justifying the redaction. However, as recalled in consideration 2 above, the Deputy

Chair of the Panel who carried out the internal appeal recommended that WHO disclose the unredacted transcript, should the reasons justifying the withholding of the information no longer exist. The complainant reiterates her request for disclosure of this unredacted transcript before the Tribunal, relying on the GBA's finding that the redacted portions of the transcript may be relevant to her defence.

The Tribunal's case law holds that staff members must, as a general rule, have access to all evidence upon which the competent authority bases its decision concerning them (see Judgments 4659, consideration 4, 3295, consideration 13, 3214, consideration 24, and 2229, consideration 3(b)). This implies, among other things, that an organisation must provide staff members with the investigation report on which the disciplinary measure against them is based (see Judgment 4659, consideration 4). However, this must be balanced against the need to respect the confidential nature of certain aspects of an investigation, particularly that of the witness statements gathered in the course of the investigation. As the Tribunal's case law has confirmed, such confidentiality may be necessary in order to ensure witnesses' protection and freedom of expression (see Judgment 3640, considerations 19 and 20). This case law implies that redaction is permissible when necessary to maintain the confidentiality of certain aspects of the investigation, especially to protect the interests of third parties (see Judgments 4815, consideration 14, and 4659, consideration 4).

Furthermore, in the present case, neither the document entitled "The investigation process" nor other WHO rules confer upon a staff member subjected to investigation an unfettered right to access the investigation report and its annexes in an unredacted version.

Consequently, it is necessary to strike a reasonable balance between the accused person's right to defence and the need to protect the interest of third parties, having regard to the specific circumstances of the instant case. The Tribunal notes that the complainant was provided with a transcript of Ms Fr.'s interview which, although redacted, was sufficient to allow her to comment on its content. Crucially, the IOS findings and the disciplinary decision do not rely on Ms Fr.'s unredacted statement. Additionally, as will be clarified later, in light of

the outcome of the case, there is no need to order the disclosure of this document. Therefore, the request for disclosure is rejected.

11. Turning to the complainant's arguments listed in consideration 3, under (viii), specifically that the IOS findings also relied on the allegations of one witness, Dr H., which the complainant was not afforded an opportunity to comment upon during the investigation, the GBA considered that this constituted a flaw. The Tribunal notes that even excluding these allegations, the findings of misconduct remain sound. However, in the Tribunal's view, in the specific circumstances of this case, this must be taken into account when assessing the proportionality of the disciplinary sanction of dismissal, as will be explained later.

12. Regarding the complainant's arguments listed in consideration 3, under (ix), concerning IOS's alleged failure to interview the six witnesses identified by the complainant, the GBA considered that this constituted a flaw. The Tribunal notes that its case law – quoted in consideration 4 above – concerning an investigator's duty to gather exculpatory evidence, including interviewing witnesses listed by the accused person, was primarily established in cases where the disciplinary charges were solely based on witness statements and the accused person questioned the credibility of the witnesses (see, specifically, Judgment 5003, consideration 5). Consequently, this specific line of case law is not entirely applicable to the present matter. Here, the charges of misconduct are supported not only by witness statements, but also by decisive and conclusive documentary evidence, consisting of emails sent by the complainant to other staff members and external third parties. Therefore, the hearing of the witnesses listed by the complainant could not have disproven the finding of misconduct already evident from the complainant's emails.

Accordingly, in the particular circumstances of the case, this element does not vitiate the finding of misconduct (see, by analogy, Judgment 4308, consideration 17) but it must be taken into account when assessing the proportionality of the disciplinary sanction of dismissal, as will be explained later.

13. The complainant's arguments listed in consideration 3, under (x), are unfounded.

The complainant contends that IOS was precluded from utilizing her WHO emails on the basis that they constituted private communications. The Tribunal holds that the emails sent by the complainant through her WHO email account to her colleagues, and which concerned work-related issues, cannot be construed as private communications or a legitimate private use of the office email account. These emails were manifestly work-related, being addressed to fellow staff members, pertaining to work issues, and expressing the complainant's views concerning third staff members. Furthermore, even the email exchanges between the complainant and external third parties, insofar as they contained offensive language or referenced the private lives of WHO staff members, cannot be construed as irrelevant private communications. Since, in light of the WHO Code of Ethics and Professional Conduct, a staff member is prohibited from "spreading gossip or rumours about a colleague", the complainant was not allowed to send such communications to third parties.

Additionally, the document entitled "The investigation process" expressly stipulates:

"8. Solely for the purpose of discharging their mandate, investigators have unfettered access to all areas of the Secretariat and all work records, whether in paper or electronic form.

[...]

12. Access to computers and electronic data of the Organization is the subject of separate procedures set out in the WHO Policy on Acceptable Use of Information and Communication Systems (Acceptable Use Policy). This policy establishes conditions for the use of information systems, which includes all hardware and software."

Regarding the alleged absence of a specific policy governing the private use of the WHO email system, the Tribunal recalls that section XIV.1.2 of the WHO eManual, under the heading "E-mail Usage Policy" relevantly read as follows:

"70 The Organization reserves the right to review, intercept, access, and disclose E-mails sent or received through the WHO E-mail systems. Any specific rules or related procedures in this regard may be listed in the

operational guidelines referred to in section XIV.1.4 paragraph 240, as applicable to WHO headquarters or the relevant regional office.

[...]

Confidentiality and privacy

[...]

260 All WHO electronic messages, including the contents of all files stored on WHO systems, are the property of WHO. WHO reserves the right to access all such information. Any specific regulations or related procedures may be listed in the operational guidelines applicable to the relevant WHO office.”

The Tribunal considers, as it did in Judgment 4858, consideration 23, that there is no evidence in the record regarding the existence of specific regulations or related procedures listed in operational guidelines (referred to in section XIV.1.2, paragraph 260, and in section XIV.1.4, paragraph 240), and the complainant’s submissions do not rely on specific rules in this respect. Based on the aforementioned rules, the Organization had the right to access the emails sent or received by the complainant through the WHO email system. There was no specific process to be followed or authorization to be sought, which are, by contrast, required in the distinct case of WHO’s access to the information and communication systems used by staff (ICS is defined in section XIV.1.1, paragraph 70, as “all computing networks, telephony equipment, computers, applications, storage devices, printers and software owned, licensed or leased by or on loan to WHO”), as per paragraphs 230, 300 and 310 of section XIV.1.1.

14. The complainant’s arguments listed in consideration 3, under (xi), alleging a breach of confidentiality, are not supported by evidence and are, thus, unfounded.

15. The complainant’s arguments listed in consideration 3, under (xii), are unfounded.

The complainant alleges a procedural flaw at the stage of the disciplinary proceedings, based on the fact that she was requested to provide her comments on the letter of charges and its annexed investigation report within 21 days, despite her doctor objecting to it.

Pursuant to Article 1130 of the Staff Rules:

“NOTIFICATION OF CHARGES AND REPLY

A disciplinary measure listed in Staff Rule 1110.1 may be imposed only after the staff member has been notified of the charges made against him and has been given an opportunity to reply to those charges. The notification and the reply shall be in writing, and the staff member shall be given eight calendar days from receipt of the notification within which to submit his reply. This period may be shortened if the urgency of the situation requires it.”

Although the statutory time limit granted to an accused person for commenting on disciplinary charges was eight calendar days, in the present case the complainant was granted a significantly longer period of 21 days. In the comments submitted by her counsel on her behalf, she mentioned her health condition but she did not request a time extension, as would have been possible. The counsel did express a reservation to submit a more detailed answer at a later date, but there is no evidence that such a submission was subsequently made or that WHO prohibited any further submission. Moreover, the comments submitted on 11 February 2021 were detailed, which manifestly demonstrates that the complainant was in a condition to defend herself, as she effectively did with the assistance of her counsel.

16. Apart from the GBA’s findings recalled in considerations 11 and 12 above, the Tribunal is satisfied that, in light of its established jurisprudence, the fundamental requirements of due process were met during the investigation and disciplinary proceedings. This conclusion is based upon the following findings:

- (i) the complainant was provided with sufficient and timely information regarding the allegations against her prior to her interview;
- (ii) her interview spanned a considerable period, accommodating her needs;
- (iii) the complainant was afforded actual opportunities to respond in writing to the investigators;

- (iv) IOS struck a reasonable balance between the need for a prompt investigation in a case of harassment and retaliation and the necessity to give due consideration to the complainant's health condition;
- (v) the elements on which the complainant was interviewed were sufficient to warrant a finding of misconduct;
- (vi) the already gathered documentary evidence rendered it unnecessary to hear further witnesses for the purpose of establishing that misconduct occurred;
- (vii) the IOS findings lawfully relied upon the emails sent by the complainant to other staff members or external addressees through her WHO email account;
- (viii) the alleged breach of confidentiality during the investigation is not sufficiently substantiated and, even if it were proven, it would not warrant the setting aside of the disciplinary decision; and
- (ix) the complainant was granted a reasonable time to provide comments on the investigation report and the charges against her.

17. The complainant raises a number of arguments which tend to demonstrate that the whole process was tainted by bias against her. She contends that:

- (i) she was targeted and retaliated against, due to her former role as focal point for harassment, in which capacity she had criticized the Administration;
- (ii) she was a whistleblower "informing the then R[egional D[irector] of illegal activities under the RD's leadership, which likely fuelled the RD in making a case against her";
- (iii) she was also targeted due to her energetic managerial style and decisions, as she had never been willing to overlook staff misconduct or performance shortcomings;
- (iv) even prior to the investigation at issue, WHO had already been attempting to construct a harassment case against her;

- (v) in November 2016, the RD informed her during a performance meeting that she had received a memorandum reporting that anonymous complaints of harassment had been made against the complainant. The Staff Association, Human Resources (HR) or the Ombudsperson had never approached the complainant regarding such complaints. At that time, an external managerial review was organized; however, the complainant's 100 per cent positive appraisal and the positive results of this management review were not taken into account in the disciplinary proceedings;
- (vi) the 23 October 2018 memorandum from CRE was tainted by bias;
- (vii) the HR Manager for EURO, Ms Go., was biased against the complainant and in a conflict of interest;
- (viii) the IOS investigation was tainted by bias, as IOS applied a double standard to the complainant and to other staff members ignoring potential misconduct by other staff, including the complainant's accusers. The complainant considers as an example of IOS's bias against her the fact that it gave more weight to the statements of Ms Fr. than to those of Ms Gr. Additionally, the two harassment complaints filed by the complainant in June 2019 have not been investigated in nearly four years. In this respect, the complainant provides the Tribunal with a list of episodes and decisions aiming to demonstrate that she was harassed throughout the entire process, from her placement on administrative leave until her dismissal;
- (ix) former staff incited others to file harassment complaints against the complainant based upon fabricated facts; and
- (x) the staff members who testified against the complainant were rewarded, while those who did not had their positions abolished.

18. Before addressing these arguments, the Tribunal reiterates its firm case law holding that the party asserting abuse of authority, bias, and improper motive must prove it (see Judgments 5001, consideration 6, 4978, consideration 12, 4971, consideration 9, 4524, consideration 15, 4467, consideration 17, 4146, consideration 10, 3939, consideration 10,

2264, consideration 7(a), and 2163, consideration 11). Mere suspicion and unsupported allegations are clearly not enough, the less so where the actions of the organization, which are alleged to have been tainted by personal prejudice, are shown to have a verifiable objective justification (see Judgment 4688, consideration 10).

19. The complainant's arguments listed in consideration 17, under (i), (ii), (iii), (iv), (v), and (vi), are unfounded.

The complainant refers to a range of episodes that predate the initiation of the investigation into her conduct, and that were not included in the investigation. The investigation itself was prompted by a complaint of harassment lodged on 28 September 2018 by Ms P. – who was, at the relevant time, the complainant's supervisee. This was preceded by a report of harassment from Ms P. herself to the Ombudsperson in June 2018. There is no evidence in the record that Ms P.'s complaint was linked to, or caused by, the complainant's former role as focal point for harassment or by the complainant's actions and decisions concerning other staff. Nor is there any evidence that Ms P.'s complaint was prompted by previous initiatives concerning the complainant, such as the managerial review held in 2016-2017, or that Ms P. was persuaded or incited by other staff to report against the complainant. Consequently, there are no grounds to conclude that the investigation into the complainant and the ensuing disciplinary proceedings were retaliatory. Additionally, the complainant asserts only in vague terms that she was a whistleblower, and, moreover, she seems to refer to past events. She has neither established that she ever formally requested the protection to which a whistleblower is entitled according to the applicable policy, nor that there is a causal link between her past role as a focal point for harassment and the complaint filed against her by Ms P.

In conclusion, the complainant fails to demonstrate that CRE, the HR Manager for EURO, or IOS, were biased against her.

20. The Tribunal will now address the complainant's arguments listed in consideration 17, under (vii).

In attempting to demonstrate that Ms Go., the HR Manager for EURO, had a conflict of interest, the complainant recounts: (i) Ms Go.'s involvement in the former managerial review she underwent; (ii) an episode which occurred in 2015, when the complainant reported Ms Go. for an alleged breach of confidentiality; and (iii) the fact that the complainant, in her past capacity as focal point for harassment, had "repeatedly reported problems with HR to the RD in her annual harassment focal point reports". She contends that Ms Go. made false statements to IOS, because she had "an obvious conflict of interest", which IOS failed to detect. The complainant adds that she had provided IOS with extensive documentation demonstrating Ms Go.'s prejudiced behaviour against her, which was ignored. She also expresses concern regarding a statement made by Ms Go. in her testimony with IOS, negatively commenting on the complainant's judicial victory in a case of harassment before the Tribunal, which, in Ms Go.'s view, resulted in a financial loss for WHO and ruined a person's life.

These arguments are unfounded.

The Tribunal's case law has it that an allegation of conflict of interest or lack of impartiality has to be substantiated and based on specific facts, not on mere suspicions or hypotheses. The complainant bears the burden of proving conflict of interest (see Judgments 4963, consideration 15, 4915, consideration 5, 4711, consideration 5, 4617, consideration 9, and 4616, consideration 6).

The complainant has not discharged her burden of proof.

The mere fact that an officer made an unfavourable decision concerning a staff member, or took part in the process leading to such a decision, does not, by itself, imply that such officer would be biased in future decisions concerning the same staff member or, as in this case, in providing testimony. Thus, Ms Go.'s previous involvement in the managerial review undergone by the complainant, does not prove that her testimony to IOS was tainted by a conflict of interest. As to the episode which allegedly occurred in 2015 and to the complainant's past actions taken in her capacity as focal point for harassment, the complainant does not support her contentions of bias with evidence. Although it is undisputed that the complainant submitted a report on

harassment in 2015, and that Ms Go. was aware of this report, this does not amount to evidence that Ms Go. was biased against her because of that report or of her role as focal point for harassment. Regarding the negative comment made by Ms Go. in her testimony to IOS concerning the complainant, the mere fact that a witness makes negative comments about the subject of the investigation, does not imply that the witness is in a conflict of interest, even allowing that the comment was inappropriate.

21. The complainant's arguments listed in consideration 17, under (viii), are unfounded.

The complainant refers to a range of episodes and decisions that occurred throughout the entire process, from her placement on administrative leave until her dismissal, as follows:

- (i) denying her access to her files thus hindering her defence;
- (ii) blaming her for delays in the investigative process;
- (iii) threatening her with disciplinary measures;
- (iv) breaking confidentiality;
- (v) attempting to influence the recommendations of her physician;
- (vi) ignoring her own harassment complaints and delaying her case submitted to the Advisory Committee on Compensation Claims (ACCC);
- (vii) abolishing her division without informing her; labelling her "unsuitable" for a director's post advertised by EURO; and
- (viii) dismissing her while on sick leave.

The Tribunal notes that two of these allegations fall outside the scope of the present complaint because they refer to decisions which are not challenged in the present complaint before the Tribunal. This applies to the decision to abolish her division, the submission of her case to the ACCC and to her own harassment complaints. The other allegations attempt to challenge the lawfulness of the investigation and disciplinary proceedings by construing its internal steps as acts of harassment. The Tribunal has already dismissed the unlawfulness of

such actions or their relevance to the outcome of the case, whilst their possible assessment as acts of harassment is outside the scope of the present complaint. Additionally, as to the complainant's allegation that she was dismissed whilst on sick leave, the Tribunal notes that there is no general principle that a staff member may not be separated while on sick leave (see Judgment 4704, considerations 9 and 10). Although this was said with reference to non-renewal/termination of contract, this principle applies all the more to dismissal for misconduct.

The complainant further contends that in its report IOS highlights a statement Ms Fr. supposedly heard from a third party that Ms Gr. had allegedly made threats against Ms Fr. and Ms P., but fails to flag the same when Ms Gr. reported that Ms Fr. threatened Ms Gr. directly in a similar manner. The complainant infers from this element that IOS gave more weight to the statements of Ms Fr., one of her accusers, than to those of Ms Gr., who made comments in support of the complainant's position. In her view, this suggests bias in the IOS report.

More broadly, she alleges that the investigative process revealed that also other staff members, including the alleged victims of harassment, might have engaged in misconduct, but were not investigated.

The Tribunal recalls its consistent case law that the principle of equal treatment cannot ordinarily be invoked to challenge a finding of misconduct (see Judgments 4361, consideration 10, 4247, consideration 13, and 3575, consideration 5). Furthermore, a decision not to initiate proceedings against other staff members has no bearing on the lawfulness of the measure applied to a staff member (see Judgment 4971, consideration 6). Thus, the Organization's failure to investigate the alleged misconduct by other staff does not nullify nor excuse the complainant's misconduct and does not establish a legal flaw in the disciplinary proceedings against her.

Moreover, IOS was mandated to investigate the complainant's misconduct and, during that investigation, possible misconduct by other staff was not relevant to that particular mandate. As a result, the fact that IOS did not consider possible misconduct by Ms Fr. (or by other staff) does not prove that it was biased against the complainant.

However, as will be clarified later, in the specific circumstances of the case, the possible misconduct by other staff should have been taken into account in the choice of the appropriate disciplinary measure.

The same reasoning applies to reject the complainant's contention that her harassment complaints lodged in June 2019 have not been investigated to date. Irrespective of the fact that she lodged her complaints only after she was accused of harassment, the possibility that she was also a victim of harassment does not excuse her conduct, which is clearly evident from her emails, revealing the use of improper and derogatory language about staff – a conduct which is unacceptable, especially given her managerial role.

22. The complainant's arguments listed in consideration 17, under (ix), and (x), are unfounded.

Her contention that former staff incited others to file harassment complaints against her based on fabricated facts is mere speculation.

Her contention that the staff members who testified against her were promoted or otherwise rewarded, while those who did not, had their positions abolished or were demoted, is presented in vague terms and is unsubstantiated. As such, it cannot be entertained. The Tribunal lacks the necessary information to assess the content of the administrative decisions concerning each of the staff members in question and to verify whether it can be inferred from those decisions a bias against the complainant, as these decisions have not been produced by the parties before the Tribunal. In the record there is no documentary evidence of such decisions. Consequently, this contention should be regarded as merely speculative.

23. The complainant advances further detailed arguments to denounce substantive flaws in the investigation and in the disciplinary proceedings, which can be summarized as follows:

- (i) Ms P. is not a victim of harassment but a perpetrator; her complaint was made in bad faith in an attempt to hide her own wrongdoing; her credibility as a witness should have been doubted; IOS failed to test Ms P.'s credibility;

- (ii) the investigation was a “fishing expedition” designed to prove the complainant’s guilt, rather than a fact-finding exercise. The complainant had a history of difficulties with staff who misbehaved and whom she reprimanded as part of her managerial role. The true issue was the complainant’s honest assessment of staff;
- (iii) IOS ignored witnesses who made positive comments about the complainant, criticized the accuser’s behaviour, or reported episodes of harassment by Ms P.;
- (iv) IOS applied inadequate interview techniques, coerced some witnesses, “did not hesitate to put words into the mouths of witnesses whose evidence was not perceived as sufficiently ‘strong’ in terms of condemning the [c]omplainant”, and misconstrued testimonies, thereby demonstrating a lack of rigour and impartiality during the interviews; the complainant refers, specifically, to the interviews of Mr K., Ms T., Dr N., Ms P., and to the interview of the complainant herself;
- (v) IOS encouraged a witness, Ms T., to contact the complainant’s accuser, Ms P., “to obtain further information for the express purpose of aiding the investigation”;
- (vi) the investigator lacked good understanding of English;
- (vii) the complainant’s written comments about some staff, in addition to being contained in her private communications, were made to third parties and not in the presence of the alleged victims of harassment. Moreover, “a recent [United Kingdom (UK)] Employment Tribunal ruling” considered “swearing” as “fairly commonplace” and “not carrying the shock value it may have done in another time”; WHO has never provided a definition of offensive or inappropriate language;
- (viii) IOS asked discriminatory questions about the complainant’s religious beliefs;

- (ix) the conclusion that the complainant removed Ms Fr.'s responsibilities and that she had abused her power by disclosing Ms Fr.'s marital situation, was incorrect; Ms Fr., in turn, perpetrated harassment and this was never investigated; and
- (x) the IOS conclusions are false, unsupported, prejudicial, and illogical, revealing a lack of and disregard for evidence, reliance upon hearsay and speculation, and a failure to ascertain and verify facts.

24. Before addressing these arguments, the Tribunal recalls its established case law concerning disciplinary matters. The Tribunal has consistently held that a staff member accused of wrongdoing is presumed innocent and is to be given the benefit of the doubt (see Judgments 4858, consideration 17, 4491, consideration 19, and 2913, consideration 9). 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 Judgments 4858, consideration 17, and 4364, consideration 10).

25. The Tribunal notes that the complainant's arguments listed in consideration 23 above focus on details of the witness statements or of the investigation but ultimately fail to establish that WHO was wrong to consider that misconduct was proven at the requisite standard.

26. The Tribunal has already noted that the IOS findings rest upon sound documentary evidence in addition to a number of witness statements. In the annex to the GBA's opinion entitled "Detailed analysis of the Panel's findings [...]", the GBA meticulously and thoroughly reviewed the IOS findings and the underlying evidence, extensively quoting from the complainant's emails, where conclusive evidence can be found. The documentary evidence consisted in a considerable number of emails sent by the complainant herself to other staff members, dispatched from her WHO email account, covering a wide span of time, e.g. from September to December 2016, from April to July 2017, from August to November 2018, and from January to February 2019. The use of these emails as evidence, as already said,

was lawful, given that they cannot be construed as private communications. These emails contain frequent improper and derogatory comments about staff. This attitude on the part of the complainant cannot be minimised by asserting – as the complainant attempts – that the comments were not made in the presence of the targeted staff, that according to a UK judgment “swearing” at work would be “fairly commonplace” and has lost its “shock value”, or that WHO has not established a precise standard regarding proper language. The UK judgment quoted in consideration 23 above, under (vii), is irrelevant, as it is not binding on WHO, which has established its own standard of conduct for its staff. The WHO legal framework on harassment is sufficiently clear to make it readily understandable what constitutes offensive language.

Indeed, the WHO Code of Ethics and Professional Conduct (2017 version) describes disrespect as follows:

“Disrespectful behaviour in terms of lack of the minimum level of courtesy and dignity in interaction with others, or inappropriate conduct, comment or display that either insults, denigrates, disparages or humiliates someone or depreciates their value [...]”

Disrespect explicitly includes:

“spreading rumours or malicious untruths to slander someone’s reputation (gossip)”.

The WHO Code of Ethics and Professional Conduct also includes as examples of harassing behaviour:

“spreading malicious rumours, or insulting someone by word or behaviour (copying information that is critical about someone to others, ridiculing or demeaning someone – picking on them or setting them up to fail)”.

Furthermore, the Code of Ethics explicitly invites all staff to refrain from:

“Spreading gossip or rumours about a colleague”.

The wording used by the complainant in her emails manifestly amounts to offensive language. The fact that she did not use that language in the presence of the targeted staff but rather behind their backs, still amounts to misconduct. Indeed, criticising a person by using offensive language in communications with third parties, is expressly

prohibited by the Code of Ethics, negatively affects the reputation of the targeted staff, and may create a hostile working environment.

27. Turning to Ms P.'s credibility, addressed in the complainant's arguments listed in consideration 23, under (i), the Tribunal is satisfied that Ms P.'s testimony was corroborated by both the documentary evidence on record and numerous other witness statements, which confirmed the complainant's attitude towards staff she had chosen to target.

Furthermore, as previously stated, the fact that Ms P. may, in turn, have perpetrated harassment or other misconduct, is an element that could warrant a proper investigation by WHO into Ms P.'s conduct, but it does not absolve the complainant of her own responsibilities. However, in the specific circumstances of this case, this element, as will be clarified later, will be taken into account by the Tribunal when assessing the proportionality of the sanction of dismissal.

28. Regarding the complainant's allegation that IOS disregarded witness statements in her favour describing her managerial style, and her contention that she was punished for how she had interpreted and carried out her managerial role (complainant's arguments listed in consideration 23, under (ii) and (iii)), the Tribunal notes that – even if it were to be accepted that the complainant's use of improper and derogatory language was part of her managerial style, or was directed at staff who were allegedly committing misconduct or exhibiting performance shortcomings, and was, therefore, a reaction or outburst prompted by such misconduct or underperformance – these circumstances would not excuse the complainant. In her managerial capacity, she ought to have addressed staff misconduct or performance shortcomings by utilising the proper legal remedies stipulated in the WHO legal framework, in compliance with due formalities, which would have allowed the staff concerned to properly defend themselves. Under no circumstances was she permitted to use derogatory language about staff, or to make negative comments about them in written or oral communications with other staff or external third parties, i.e. in an

informal context that did not afford the targeted staff to respond or defend themselves.

29. As to the complainant's criticism of the content of the witness interviews and the manner in which they were conducted (complainant's arguments listed in consideration 23, under (iv) and (v)), the Tribunal is satisfied that the verbatim transcripts of the numerous interviews reveal none of the alleged flaws. IOS applied standard techniques and neither coerced witnesses nor made improper suggestions to them. There is no evidence of undue pressure or suggestions in the transcript of the interviews of Mr K., Ms T., Dr N., Ms P., or of the complainant. There is no evidence that IOS encouraged a witness, Ms T., to contact Ms P. (the complainant's main accuser), "to obtain further information for the express purpose of aiding the investigation". IOS merely suggested that the witness seek Ms P.'s authorization to share with IOS a WhatsApp exchange between the witness and Ms P.

30. The complainant's allegation that the investigator lacked proper knowledge of English (complainant's arguments listed in consideration 23, under (vi)) is unproven and fails to establish a legal flaw in the process. The complainant merely affirms that "IOS investigator Ms [F.] [...] showed difficulty at times in expressing herself and understanding the English used" and quotes examples of alleged misunderstanding of a few words, which is not sufficient to call into question Ms F.'s ability to conduct an investigation.

31. The complainant's allegation that IOS asked discriminatory questions about her religious beliefs (complainant's arguments listed in consideration 23, under (viii)) is unfounded. One of Ms P.'s accusations was that the complainant had made unpleasant comments based on the complainant's religious beliefs. Thus, the questions posed by IOS concerning religion did not amount to questioning the complainant about her religious beliefs, but rather aimed at investigating comments made in relation to religious beliefs, which may be relevant in a pattern

of misconduct. Indeed, pursuant to paragraph 94 of the WHO Code of Ethics and Professional Conduct:

“WHO staff members must exercise caution and refrain from expressing their opinions and beliefs, including religious beliefs, publicly [...]”

Additionally, the IOS report contains no findings regarding this aspect and, accordingly, the complainant’s arguments are irrelevant to the outcome of the case.

32. The Tribunal will now address the complainant’s arguments listed in consideration 23, under (ix).

The complainant alleges that IOS erred in concluding that removing Ms Fr.’s responsibilities constituted an abuse of authority by the complainant. In her view, IOS disregarded emails demonstrating that the complainant acted in consultation with the HR manager and the RD, confirming that the RD desired Dr N. to have a clean start with a new assistant. The HR manager advised the complainant that she was at liberty to reassign Ms Fr. to other tasks until Ms Fr.’s reassignment was complete.

The Tribunal holds that some of the complainant’s arguments are correct.

The IOS findings concerning Ms Fr. acknowledged that Ms Fr.’s reassignment was lawful, but asserted that, nonetheless, the complainant abused her authority in managing Ms Fr.’s reassignment. This abuse, in IOS’s view, was twofold: the complainant gave instructions to remove responsibilities from Ms Fr. before her reassignment was finalized; and she used inappropriate and unprofessional language when discussing the matter with other staff. In turn, count 2 in the letter of charges affirms, in the relevant part: “[The complainant] abused [her] authority in relation to the management of Ms [Fr.], [...] and her transfer [...], by giving instructions to remove responsibilities from Ms [Fr.], before the reassignment was finalised and instructing Dr [Ga.] to ignore [Ms Fr.’s] concerns; using inappropriate and unprofessional language when discussing the matter with other DIR staff, and by divulging sensitive information concerning Ms [Fr.’s] marital situation and residence status in Denmark, including to Ms [Gr.], [...] who [the complainant] knew

was in a potential conflict of interest but was allowed to sign the memorandum concerning Ms [Fr.'s] transfer out of division on [the complainant's] behalf; and [the complainant] unduly forwarded damaging information concerning unconfirmed allegations of misconduct to Ms [Fr.'s] new supervisor.”

The Tribunal notes that the complainant was not accused of unlawfully reassigning Ms Fr., but rather of having abused her authority in managing such reassignment. The evidence on record demonstrates that, in light of the email exchange that occurred in August 2018 between the complainant and Ms Go., the complainant was authorized to assign Ms Fr. to different tasks before her reassignment was finalized. In an email dated 29 August 2018, Ms Go. wrote to the complainant: “I am aware of the urgency of the situation, and of RD’s wishes regarding the reassignment of [Ms Fr.], and am seeking a formal solution for her reassignment within the rules and regulations. In the meantime, should you wish to do so, you are also free to reassign [Ms Fr.] to other duties within DIR, until a longer-term solution can be agreed.” In light of this evidence, the complainant is correct in asserting that she was at liberty to assign Ms Fr. to other duties before the completion of the reassignment process.

Thus, the disciplinary decision, which refers to the letter of charges and the IOS findings, is inaccurate in its conclusion that the complainant committed an abuse of authority “by giving instructions to remove responsibilities from Ms [Fr.], before the reassignment was finalised”. The complainant did remove Ms Fr.’s responsibilities, but she also reassigned her to other tasks on 30 August 2018 – as authorized by Ms Go. in her 29 August 2018 email.

The complainant further contends that the IOS finding that she had abused her power by disclosing Ms Fr.’s marital situation was inaccurate, as it was Ms Fr. herself who divulged her situation to others not only in person but also by publishing it on her social media page. The Tribunal notes that IOS’s finding in this respect is rather vague and unsupported by persuasive evidence. It appears from the evidence in the file that the intimate relationship between Ms P. and Ms Fr. was an

“open secret” in the workplace and it cannot be said that it was the complainant who divulged it.

However, the charge of abuse of authority in managing Ms Fr.’s reassignment is also grounded on further reasons, which are sound and remain valid. Therefore, these two errors of fact, in the specific circumstances of this case, where the evidence is mainly documentary, have no bearing on the conclusion contained in count 2 that the complainant engaged in misconduct concerning Ms Fr. However, in the specific circumstances of this case, they must be taken into account in the assessment of the proportionality of the disciplinary sanction.

Furthermore, the fact that Ms Fr. may, in turn, have perpetrated harassment or other misconduct is an element that could warrant a proper investigation by WHO, but it does not absolve the complainant of her own responsibilities. Nonetheless, in the specific circumstances of this case, this element, as already said, will be taken into account by the Tribunal when assessing the proportionality of the sanction of dismissal.

33. In conclusion, in light of the evidence gathered by the investigator, the IOS findings were substantiated and, contrary to the complainant’s contention (see her arguments listed in consideration 23, under (x)), cannot be considered false, unsupported, prejudicial, illogical, based on hearsay and speculation, or tainted by partiality. In the circumstances of this case, the Tribunal is satisfied that, based on the IOS findings, WHO was right to conclude, as it did, that the complainant had engaged in misconduct beyond reasonable doubt.

34. The complainant also challenges the proportionality of the sanction of dismissal. She contends that dismissal has typically been imposed on staff accused of fraud, criminal activities, acting for personal gain, or of rape – deeds which are significantly more egregious than the claims of harassment and breach of confidentiality brought against her. She adds that in cases of alleged misconduct for harassment similar to the accusation she faced, lesser sanctions, such as demotion or reassignment, were applied.

The Tribunal's well-settled case law has it that the choice of the appropriate disciplinary measure falls within the discretion of an organization, provided that the discretion is exercised in observance of the rule of law, particularly the principle of proportionality (see Judgments 4660, consideration 16, 4504, consideration 11, 4247, consideration 7, 3971, consideration 17, 3944, consideration 12, 3640, consideration 29, and 1984, consideration 7). In reviewing the proportionality of a sanction, the Tribunal cannot substitute its evaluation for that of the disciplinary authority, and it limits itself to assessing whether the decision falls within the range of acceptability (see Judgment 4504, consideration 11). A staff member's lengthy service and recognised professional abilities and previous good record are not, by themselves, mitigating factors (see Judgment 4859, consideration 28), even though in some cases they can be (see Judgments 4949, consideration 26, 4457, consideration 20, and 3083, consideration 20).

In the present case, the GBA detected some flaws in the investigation (see considerations 2, 11 and 12 above), and a further flaw was found by the Tribunal (see consideration 32 above). Although those elements did not prevent the conclusion that the complainant's misconduct was proven beyond reasonable doubt, they nevertheless impeded a proper assessment of the gravity of the misconduct itself.

It is useful to note that even though Ms P.'s and Ms Fr.'s credibility cannot be questioned, as their allegations were corroborated by documentary evidence, the fact that they were victims of harassment by the complainant, does not preclude the possibility that they, in turn, may have engaged in harassment towards other staff. In this respect, there are significant elements in some of the witness statements that would have warranted a more in-depth investigation for a better understanding of the atmosphere in the work environment and the assessment of possible mitigating factors. Moreover, the sequence of events as it emerges from the file, suggests:

- (a) a possible failure by Ms P. to disclose in due time her intimate relationship with her supervisee, Ms Fr., for the proper measures to be taken;

- (b) a possible misconduct by Ms P. in approving and requesting significant overtime benefits for her partner and supervisee, Ms Fr.;
- (c) possible performance shortcomings by Ms P. in the publication of the European Health Report 2018;
- (d) initiatives taken by the complainant concerning the possible misconduct and shortcomings mentioned above; and
- (e) the fact that Ms P. reported the complainant for harassment shortly thereafter.

Although the hearing of the witnesses identified by the complainant and a proper investigation into the atmosphere in the work environment would not have negated the finding that the complainant had engaged in misconduct, it would have helped determine the facts within their overall context and would have offered a better framework and understanding of the complainant's behaviour. An accurate finding of the overall context would possibly have played a fundamental role in assessing the gravity of the misconduct and the weighing of any mitigating circumstances. Thus, the complainant was not granted the opportunity to usefully invoke the occurrence of mitigating factors in her favour.

Additionally, the disciplinary sanction of dismissal was also based on errors of facts, as explained in consideration 32 above.

Moreover, in determining the appropriate sanction in the specific circumstances of this case, the complainant's unblemished service over more than 20 years should have been weighed more as a mitigating factor (see Judgment 4457, consideration 20), rather than as an aggravating factor, as the disciplinary decision did (the disciplinary decision states: "[...] given your seniority and your long experience working in the UN system you were well aware of the values and expectations of the Organization in regard of its staff members").

The Tribunal is satisfied that the complainant has established that the sanction was disproportionate. The impugned decision and the disciplinary decision will be set aside accordingly.

35. It is not the Tribunal's role to assess the appropriate disciplinary sanction to be chosen. Indeed, this is a decision which falls within the discretion of the organisation, which must follow the proper procedures. In this case, that would require new disciplinary proceedings.

The complainant seeks reinstatement, whereas WHO replies that the complainant's misconduct led to a loss of confidence in her by the Organization, rendering reinstatement inappropriate.

In ordinary circumstances, the complainant should be reinstated and the case remitted to WHO for new disciplinary proceedings and determination of the proper sanction.

Ordinarily, an official holding a continuous appointment dismissed on disciplinary grounds whose dismissal is set aside is entitled to be reinstated (see Judgment 4579, consideration 7). However there is a line of precedents which do not order reinstatement in light of the specific circumstances of each case, taking specific account of the loss of confidence and the effluxion of time (see, for example, Judgments 4943, consideration 8, 4924, consideration 12, 4674, consideration 23, 4660, consideration 20, 4540, consideration 13, 4457, consideration 24, 4456, consideration 18, 4063, consideration 11, 2034, consideration 11, and 1238, consideration 4).

In the present case, the Tribunal considers that ordering reinstatement is inappropriate in light of the following elements:

- (i) the alleged loss of confidence by WHO is based on reasons that can only be regarded as legitimate given the nature of the complainant's misconduct;
- (ii) the complainant's department was abolished in February 2020;
- (iii) a significant amount of time has passed since the complainant's dismissal became effective;
- (iv) the continuing appointment the complainant held before her dismissal would be due to expire on 31 March 2026; and

- (v) if the Tribunal were to order the complainant's reinstatement, it would also order new disciplinary proceedings, and this would likely imply that she might again be subjected to administrative leave and to a probable severe sanction which could include dismissal.

36. As an alternative to reinstatement, the complainant is entitled to an award of material damages.

The complainant is entitled to material damages which are not corresponding to the whole loss of her salary. Material damages should be determined taking into account that if the disciplinary proceedings would have been properly carried out, she might have been issued with a less severe sanction which might, in any case, have had financial consequences for her.

The Tribunal deems it appropriate and fair to assess the material damages in a lump sum equivalent to the complainant's remuneration for two years, which will be calculated on the basis of the net salary and allowances of any kind which she was receiving at the time of her dismissal, without deducting from this sum any earnings which she may have received since then. As this lump sum must be regarded as compensating for the entire material injury suffered by the complainant, there is no need to add to it the amount of the pension contributions relating to the remuneration in question or to pay interest for late payment thereon (see, for example, Judgment 4660, consideration 22).

37. The sanction of dismissal also caused the complainant obvious moral injury since it seriously damaged her honour and professional reputation and inevitably caused her a psychological shock and a feeling of anxiety about losing her job. The Tribunal finds it fair to award the complainant moral damages in the sum of 45,000 Swiss francs, in addition to the amount of 5,000 Swiss francs already awarded in the impugned decision.

38. The complainant also requests moral compensation for the delay in the process, arguing that the overall duration of the investigation and disciplinary proceedings was excessively long. She contends that she was left in a state of complete uncertainty about her career for roughly 30 months, during which time she was suspended from service. Having regard to the circumstances of the case and, specifically, its complexity and the number of witnesses interviewed, the Tribunal finds that the length of the process was not inordinate and, therefore, the complainant is not entitled to moral damages in this regard.

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

40. The complainant has applied for oral proceedings and has listed four witnesses including the complainant herself. She requests that the Tribunal hear the witnesses on the “direct interactions with complainant’s accusers and their behaviour” and on the “Administration’s conduct towards [the] complainant”.

The Tribunal observes that the parties have presented ample written submissions and documents which have enabled the Tribunal to reach an informed and just decision on the case. Given the outcome of the case, there is no need to address the request to hear witnesses.

DECISION

For the above reasons,

1. The decisions of the WHO Director-General of 21 January 2023 and 24 September 2021 are set aside.
2. WHO shall pay the complainant material damages calculated in the manner stated in consideration 36 above.
3. The Organization shall pay the complainant 45,000 Swiss francs in moral damages.
4. It shall also pay her 10,000 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 21 October 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, 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.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.