CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 591/2018 (Michel BRECHENMACHER
v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges,

Assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Michel Brechenmacher, lodged his appeal on 10 July 2018. On 13 July 2018, it was registered under No. 591/2018.

2. On 13 August 2018, the Secretary General submitted his observations on the merits of the appeal.

3. On 26 October 2018, the appellant submitted observations in reply.

4. The public hearing took place in the Administrative Tribunal's courtroom in Strasbourg on 23 November 2018. The appellant was represented by Maître Grégory Thuan Dit Dieudonné, member of the Strasbourg Bar, assisted by Ms Clémence Minet, lawyer, while the Secretary General was represented by Mr Jörg Polakiewicz, Jurisconsult and Director of Legal Advice and Public International Law, assisted by Ms Sania Ivedi and Mr Kevin Brown, both administrative officers in the Legal Advice Department.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The appellant was a Council of Europe staff member on an indefinite-term contract who has been dismissed from the Organisation. He is contesting this disciplinary measure.

6. At the time of the events which led to his dismissal, the appellant held the grade C5 and was working as team leader in charge of fire safety.

7. In the course of his work, the appellant was required to oversee a team of employees from an external service provider.

A. Background and initial disciplinary proceedings

8. In October 2013, allegations of sexual harassment were made against the appellant by a member of his team, an employee of the external service provider.

9. Following the disciplinary proceedings against him, on 5 February 2014 the appellant was reprimanded for having breached his obligations under Article 25 of the Staff Regulations.

10. The external service provider's employee having also filed a complaint of sexual assault against the appellant with the French authorities, the ensuing criminal investigation concluded that the alleged offence was "insufficiently serious" and the case was closed in May 2014.

B. The events which gave rise to the present appeal

11. In the evening of 11 June 2015, a dozen colleagues went out to a restaurant. In the course of the evening, the guests made a video which showed them posing for a photo. The appellant was standing behind a member of his team, an employee from the external service provider.

12. On 16 July 2015, this employee complained to her manager that the appellant had engaged in inappropriate behaviour towards her, amounting to sexual harassment.

She recounted various types of undesirable behaviour to which she had allegedly been repeatedly subjected in the workplace and accused the appellant of engaging in sexually suggestive physical contact. She also described an incident that occurred at the party on 11 June 2015. According to her, when the aforementioned photograph was being taken, the appellant suddenly placed his hand on her private parts. It was a deliberate application of pressure, which caught her by surprise and left her shocked and unable to react straightaway. In her complaint to her manager, the external service provider's employee asked for steps to be taken to put an end to such behaviour.

C. The second set of disciplinary proceedings

13. These allegations having been brought to the attention of the Organisation, it opened an internal inquiry pursuant Instruction No. 51 of 10 June 2006 on internal inquiries adopted by the Secretary General.

14. At the end of the inquiry, on 13 December 2015, the person conducting it found that the appellant had acted in breach of Article 1 of Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe and also his duty of loyalty to the Organisation, as set out in Article 25, paragraph 1, of the Staff Regulations.

15. The person conducting the inquiry recommended that disciplinary proceedings be instituted against the appellant.

16. On 23 February 2016, the Deputy Secretary General referred the matter to the Disciplinary Board.

17. On 20 May 2016, the Disciplinary Board delivered its opinion. It concluded that, according to its assessment of the case, the behaviour of which the appellant was accused did not amount to a failure to comply with his obligations under the Staff Regulations or any other applicable regulations that would require him to be disciplined.

18. The Disciplinary Board nevertheless acknowledged that, in view of the context and the repeated accusations of inappropriate behaviour made against the appellant in the past, his behaviour at work, in particular towards female colleagues, was problematic. The Disciplinary Board added that it was the Administration's responsibility to provide the appellant with the necessary support to overcome the problems he encountered in his dealings with his female colleagues. It recommended that the appellant be invited to recognise the wrong he had done to the external service provider's employee and apologise to her for it.

19. In a memorandum dated 17 June 2016, the Deputy Secretary General informed the appellant that she had decided, in the light of the Disciplinary Board's findings, not to impose the disciplinary measures provided for in Article 54 of the Staff Regulations.

20. Taking into account the recommendations made by the Disciplinary Board, she informed the appellant that she was instructing her superiors to draw up, in co-operation with the Directorate of Human Resources, a list of appropriate measures to try to remedy his problems in terms of behaviour towards female colleagues. In response to a request from the appellant to be assigned to men-only teams, she said that, in her view, this was neither feasible nor the best solution. She also asked him to formally apologise to the employee concerned.

D. Criminal prosecution by the French authorities

21. In the meantime, on 24 July 2015, the external service provider's employee had filed a criminal complaint of sexual harassment, which led to an investigation by the French criminal police.

22. On 23 May 2017, Strasbourg Criminal Court handed the appellant a six months' suspended prison sentence for sexual assault, with the conviction to be entered in bulletin No. 2 of his criminal record, referring only to the offence committed on 11 June 2015. The Court ordered the appellant to pay the service provider's employee the sums of EUR 4,000 for non-pecuniary damage and EUR 1,000 for costs. While the Criminal Court conceded that no one had seen the appellant to touch the employee's private parts and that it was difficult to interpret her behaviour from the video, various pieces of evidence, such as the testimony of a colleague in whom she confided less than an hour after the alleged incident, the change in her attitude and the clarity and modesty with which she expressed herself at the hearing, led it to conclude that he was guilty.

23. The appellant did not appeal against the judgment which became final.

24. Rumours about the conviction led the Organisation to request, on 17 August 2017, a copy of the judgment from the Registry of the Criminal Court, which sent it on 23 August 2017.

E. The third set of disciplinary proceedings

25. On 16 February 2018, the Deputy Secretary General referred the matter to the Disciplinary Board under Article 2, paragraph 2, of the Regulations on disciplinary proceedings (Appendix X to the Staff Regulations).

26. The attached report read as follows:

> "… the Deputy Secretary General:
>
> - considers that the [appellant's] final criminal conviction for sexual assault, committed against a female colleague (Strasbourg Criminal Court judgment of 23 May 2017) shows that the staff member in question has failed to comply with the basic ethical principles of integrity and respect for the dignity of others and that the conduct of which he is accused may be considered contrary to the obligations by which he is bound as a staff member of the Council of Europe (in particular Article 25 of the Staff Regulations, Rule No. 1292 on the protection of human dignity at the Council of Europe and the Charter on Professional Ethics of 15 July 2005, in particular Article II.4 thereof); the violations in question are especially serious in a sector such as fire safety, where the individual performs his duties, as it requires exemplary probity and may require him to come into physical contact with women for professional purposes (including resuscitation and first aid);
>
> - considers that the said conviction adversely affects the Organisation's reputation, in particular vis-à-vis its external service provider …, and is morally prejudicial to the Council;
>
> - considers that the [appellant's] failure to inform the Council of Europe of his conviction, notwithstanding the fact that the case in question arose in a professional context, may be considered a breach of his duty of loyalty to the Council of Europe (Article 25 of the Staff Regulations); …".

27. In an opinion delivered on 27 April 2018, the Disciplinary Board concluded, by a majority, that the mere fact of being convicted did not constitute a failure to comply with the obligations under the Staff Regulations and other applicable regulations. As to the second allegation, namely the failure to inform the Organisation of the conviction, the Disciplinary Board concluded unanimously that there had been no failure to comply with the obligations under the Staff Regulations and other applicable regulations.

28. On 14 May 2018, the Deputy Secretary General heard the appellant.

29. On 24 May 2018, the Secretary General heard the appellant.

30. On 25 May 2018, the Secretary General ordered that the appellant be removed from his post by way of a disciplinary measure. The reasoning for this decision was as follows:

> "…
>
> WHEREAS, notwithstanding the opinion of the Disciplinary Board of 27 April 2018, the facts of the offence of sexual assault committed by [the appellant], their qualification as well as the latter's guilt, are established by the final judgment of the [criminal] *Tribunal* [*de Grande Instance*] *de Strasbourg* of 23 May 2017;
>
> CONSIDERING that, in behaving in a way that has led to such a conviction at the end of criminal proceedings, [the appellant] has not conducted himself in the manner required of an international civil servant and has not demonstrated the integrity and respect for human dignity which the Council of Europe demands of its staff members;
>
> WHEREAS under Article 12, paragraph 1, of the Staff Regulations, the Secretary General shall seek to ensure the employment of staff of the highest ability, efficiency and integrity;
>
> CONSIDERING that the solemn commitment entered into under Article 25, paragraph 1, of the Staff Regulations, signed by staff members when taking up their duties, is binding on the staff member in every sphere of life, covering both occupational and private activities;
>
> CONSIDERING that a Council of Europe staff member besides carrying out his allotted tasks, has a duty to show such exemplarity of behaviour as not to harm the Organisation's reputation; that every staff member must in particular abide by the law and respect the public order of the host state or of any other country the Organisation may assign him to;
>
> WHEREAS, pursuant to Article 25 of the Staff Regulations, the staff members of the Council of Europe must refrain from any action which might reflect upon their position as members of the staff of the Council or which might be prejudicial morally or materially to the Council;
>
> CONSIDERING that the final conviction for sexual assault … by judgment of 23 May 2017 […], adversely affects the Organisation's reputation, in particular vis-à-vis its external service provider …, and is prejudicial to the Council of Europe;
>
> CONSIDERING that this conviction demonstrates that [the appellant] failed to comply with the basic ethical principles and respect for the dignity of others and that he has not been able to adjust his behaviour towards his female colleagues, whereas, as noted by the *Tribunal de Grande Instance*, the failings in question related to a professional context in which [the appellant] has already shown significant behaviour problems as regards his conduct towards women;

CONSIDERING that the sanctioned acts must be taken into account in view of the specific nature of the duties performed by [the appellant] in the fire safety sector and which may imply physical contacts with women for professional purposes (including resuscitation and first aid);

CONSIDERING that the sanctioned acts are therefore incompatible with the duties performed by [the appellant], which required exemplary probity;

WHEREAS in a Policy Statement of 28 September 2010 on harassment, the Secretary General and the Deputy Secretary General have committed themselves to guaranteeing a work environment free of sexual and psychological harassment and to establishing a culture of mutual respect in accordance with Article 4 of the Charter on professional ethics. In this respect, the Secretary General and the Deputy Secretary General have undertaken to take appropriate measures against proven harassers, including disciplinary measures under Article 54 of the Staff Regulations, and to afford effective protection to the staff members who believe themselves to be victims of harassment;

CONSIDERING that the conduct resulting in the final conviction of [the appellant] by judgment of 23 May 2017 is in breach of Articles 1 and 2 of Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe prohibiting all forms of sexual harassment in the workplace or in connection with work in the Council of Europe, and of Article II. 4 of the Charter on professional ethics of 15 July 2005;

WHEREAS according to paragraph 4 of Article 1 of Rule No. 1292, the fact that there existed, at the time of the facts at issue, a relationship of authority between the victim of the sexual assault and [the appellant] is an aggravating circumstance;

CONSIDERING that the nature and gravity of such failures cannot escape a diligent staff member. ….”

31. In his decision to dismiss the appellant, the Secretary General disregarded the second allegation against the appellant, namely that he failed to officially notify the Organisation of his criminal conviction.

32. On 6 June 2018, the appellant submitted an administrative complaint to the Secretary General against the decision of 25 May 2018 (Article 59, paragraph 2, of the Staff Regulations).

33. On the same day, the appellant applied to the Tribunal for a stay of execution under Article 59, paragraph 9, of the Staff Regulations. By an order of 20 June 2018, the Chair of the Tribunal declined to grant the requested stay.

34. On 6 July 2018, the Secretary General rejected the administrative complaint as being ill-founded.

35. On 13 July 2018, the appellant lodged the present appeal.

II. RELEVANT LAW

36. Disciplinary matters are governed by Part VI (Discipline) of the Staff Regulations and by Appendix X to the Staff Regulations (Regulations on disciplinary proceedings).

37. The relevant provisions of Part VI read as follows:

"Article 54 – Disciplinary measures

1. Any failure by staff members to comply with their obligations under the Staff Regulations, and other regulations, whether intentionally or through negligence on their part, may lead to the institution of disciplinary proceedings and possibly disciplinary action.

2. Disciplinary measures shall take one of the following forms:
a. written warning;
b. reprimand;
c. deferment of advancement to a higher step;
d. relegation in step;
e. downgrading;
f. removal from post.

3. A single offence shall not give rise to more than one disciplinary measure.

Article 55 – Disciplinary Board

1. A Disciplinary Board shall be set up, consisting of a Chair and four members.

(…)

Article 56 – Disciplinary proceedings

1. Disciplinary proceedings shall be instituted by the Secretary General after a hearing of the staff member concerned.

2. Disciplinary measures shall be ordered by the Secretary General after completion of the disciplinary proceedings provided for in Appendix X to these Regulations."

38. The relevant provisions of Appendix X to the Staff Regulations read as follows:

"Article 1

These Regulations, issued in accordance with Article 56 of the Staff Regulations, govern disciplinary proceedings.

Article 2

1. …
2. If the misconduct of which the staff member is accused may warrant one of the disciplinary measures provided for in Article 54, paragraph 2.c, d, e and f, the Secretary General shall lay before the Disciplinary Board a report clearly specifying the reprehensible acts and the circumstances in which they were allegedly committed.

3.The said report shall be transmitted to the Chair of the Disciplinary Board, who shall bring it to the knowledge of the Board members and of the staff member.

…

Article 12

Where there are new facts supported by relevant evidence, disciplinary proceedings may be re-opened by the Secretary General on his or her own initiative or on application by the staff member concerned."

THE LAW

39. The appellant asks that the Secretary General's decision of 25 May 2018 to dismiss him by way of a disciplinary measure be set aside and that he be reinstated in his post.

40. In his observations in reply to those submitted by the Secretary General, the appellant now asks the Tribunal to award him 100% of the earnings he has lost since 30 June 2018 and the sum of 15,000 euros for non-pecuniary damage. He is also seeking 3,000 euros for costs incurred in the disciplinary proceedings.

41. The Secretary General invites the Tribunal to declare the appeal ill-founded and to dismiss it. He also asks to dismiss the appellant's claims for compensation.

I. THE PARTIES' SUBMISSIONS

A. The appellant

42. According to the appellant's submissions as set out in his observations in reply, the impugned decision is flawed on several counts. Firstly, the decision to remove him from his post is inadmissible and secondly, regarding the merits of the decision, the reasons given for the disciplinary measure were inappropriate and insufficient and the measure itself was manifestly disproportionate.

1. *The objection as to the inadmissibility of the dismissal decision*

43. The appellant points out that, after the final judgment convicting him was sent to the Council of Europe, the Deputy Secretary General went back to the Disciplinary Board, asking it to decide what disciplinary action should be taken in response to this conviction, in "new disciplinary proceedings, under Article 2, paragraph 2 of the Regulations on disciplinary proceedings".

44. Under the guise of initiating new disciplinary proceedings, therefore, the Organisation was in reality asking the Disciplinary Board to consider exactly the same facts, thus robbing this second set of disciplinary proceedings of any basis and committing an abuse of the disciplinary procedure as set out in the internal regulations.

45. The appellant notes that the Secretary General was careful to emphasise that these were new disciplinary proceedings, separate from the first set, and that it was not a matter therefore of re-opening these initial proceedings based on new facts, within the meaning of Article 12 of the Regulations on disciplinary proceedings.

46. The appellant adds that, even supposing this final judgment did constitute a new fact, the Deputy Secretary General should have brought the matter before the Disciplinary Board on the basis of Article 12 of the Regulations on disciplinary proceedings and not Article 2, thus depriving the appellant of the opportunity to discuss the character, purpose and nature of the said

"new fact" and to make the observations necessary to enable him to exercise his rights of defence.

47. In the instant case, the Secretary General having been able to take the dismissal decision only because of the referral to the Disciplinary Board, that decision must necessarily be set aside, since the basis for the Administration's position is flawed, thus making the second set of disciplinary proceedings and, hence, the decisions ensuing therefrom, unlawful.

48. In any event, the decision taken by the Secretary General on 25 May 2018 to dismiss the appellant must be set aside on the ground of abuse of procedure, because the referral to the Disciplinary Board in the second disciplinary proceedings on the facts at issue was unfounded or, at any rate, ill-founded.

2. *On the inappropriate and insufficient nature of the explanation for the Secretary General's decision to dismiss the appellant*

49. First, the appellant accepts that, in disciplinary matters, the authority vested with disciplinary power in an international organisation has discretion as to the choice of sanction to be imposed and that, as a result, it is open to the Secretary General to deviate from the opinion delivered by the Disciplinary Board.

He further observes, however, that, according to international case-law (including that of the Tribunal), in order to preserve the rights of the staff member who is the subject of disciplinary proceedings, there is an "enhanced" obligation to give reasons when the decision-maker orders that the person be dismissed.

The appellant accordingly refers to the requirement for a special statement of reasons when the decision-maker decides not to follow the recommendations of the Disciplinary Board. In his view, this obligation on the part of the Secretary General to give reasons is amplified not only when he decides to deviate from the opinion of the internal advisory body but also when he decides to impose the most severe administrative sanction on the employee concerned.

50. The appellant goes on to note that, in his dismissal decision, the Secretary General held that the facts of the offence of sexual assault committed, their qualification as well as the latter's guilt, were established by the final judgment of the Criminal Court of 23 May 2017 and that this judgment should be binding on the Disciplinary Board in all its aspects.

51. In the appellant's view, however, this ground, based on the *res judicata* effect of court judgments, calls for two comments.

52. Firstly, the Council of Europe's Disciplinary Board, as an independent body, is not bound by the judgments handed down by domestic courts. Nor is the Secretary General for that matter.

53. Secondly, the appellant argues that his failure to appeal his conviction is not synonymous with an admission of guilt but should be construed more as a desire to put an end as quickly as

possible to a judicial process that had left him exhausted, worn out and severely affected psychologically.

54. The appellant also points out that, in 22 years that he worked as a permanent staff member in the Council of Europe's fire safety department, and the 12 years that he held the position of team leader, he was only once the subject of disciplinary proceedings, and those ended merely in a reprimand. In the present proceedings, the Disciplinary Board twice concluded that the allegations before it were not such as to warrant a disciplinary measure under the internal regulations, the Secretary General having himself initially confirmed this view.

55. The appellant maintains that, throughout his career, he has received very positive appraisals based on his proven professionalism. To contend that the decision to remove him from his post was justified "in view of the specific nature of the duties performed" insofar as "they may imply physical contacts with women for professional purposes" does not seem very appropriate, therefore. Similarly, the supposed physical contacts are of a highly theoretical kind as they are liable to occur only in extreme and therefore entirely hypothetical cases.

56. The appellant also takes issue with the argument concerning the repercussions of his conviction on the Council of Europe's image, pointing out that the Secretary General has not adduced any evidence that news of the conviction spread beyond the staff of the service provider. The number of people who are aware of the conviction is limited, therefore, so any negative repercussions on the Organisation's image will be equally limited. There is, moreover, no evidence to support the allegation that the Council of Europe suffered serious moral prejudice.

57. Lastly, the Administration never explained in its decision why it felt that the less severe disciplinary measures could not be applied effectively, proof that it failed here in its obligation to provide a specific and exhaustive statement of reasons.

58. In the light of all of the foregoing, the Secretary General's decision to dismiss the appellant is not sufficiently reasoned. It is therefore unlawful and should be set aside.

3. On the manifestly disproportionate nature of the measure imposed on the appellant

59. The appellant submits that the decision to remove him from his post was disproportionate in many respects. In subjecting him to the most severe disciplinary measure, the Secretary General failed to comply with the principle of proportionality required in this matter having regard to the seriousness of the wrongdoing, the damage actually caused to the reputation of the Council of Europe, the personal circumstances of the perpetrator and, finally, the choice of sanctions available.

60. The appellant accordingly submits four arguments to show that the sanction was disproportionate having regard to the wrongdoing, the actual damage to the Organisation's reputation, the appellant's personal circumstances and, lastly, the possibility of imposing a less severe sanction.

61. The appellant concludes that, in these circumstances, removal from post cannot be considered a proportionate sanction. It is therefore unlawful and should be annulled.

B. The Secretary General

62. The Secretary General begins by pointing out that, as the Tribunal has consistently held in disciplinary matters, it is for the Secretary General to assess what sanction should be imposed and the Tribunal cannot substitute its own appraisal for that of the Secretary General. He thus has discretionary power and, above all, is not bound by the opinions of the Disciplinary Board (ATCE, appeals Nos. 190, 196 and 197/1994 and No. 201/1995, Lelegard v. Governor of the Social Development Fund, decision of 29 September 1995, paragraphs 132, 160 and 175-176; appeal No. 208/1995, Maréchal v. Governor of the Social Development Fund, decision of 29 March 1996, paragraphs 61-62; appeal No. 247/1998, Rattanamasay v. Secretary General, decision of 9 June 1999, paragraph 39; appeal No. 248/1998, X. v. Secretary General, decision of 20 May 1999, paragraph 36).

63. The Secretary General goes on to state that, of course, such discretion must be exercised lawfully, and it is from this perspective that his decision is subject to review by the Tribunal. Although it has no say as to whether a disciplinary measure is called for, the Tribunal is allowed, therefore, to satisfy itself that the punishment is appropriate and to set aside any punishment which is disproportionately severe. In this respect, he points out that, according to the case-law, an error of law is deemed to have occurred if the disciplinary measure is "out of all proportion to the objective and subjective circumstances in which the misbehaviour was committed" (ATCE, Lelegard decision, cited above, paragraphs 177 and 178; appeals Nos. 187 and 193/1994, Roose v. Governor of the Social Development Fund, 29 September 1995, paragraphs 125 and 126).

64. With regard to the present appeal, the Secretary General asserts that, in removing the appellant from his post, he took into account both the nature of the allegations against the appellant and his conduct. In so doing, he did not overstep the discretion allowed him.

65. As to the facts, he notes that he relied on the fact that, despite the assessment made by the Disciplinary Board in its opinion of 27 April 2018, the facts of the offence of sexual assault committed by the appellant, their qualification as well as the latter's guilt, had been established by the final judgment handed down by Strasbourg Criminal Court on 23 May 2017.

66. By virtue of the *res judicata* authority attached to this final court decision, it is considered as an expression of the truth, a principle that is encapsulated in the maxim *res judicata pro veritate habetur* (a matter adjudged is held to be true).

67. In deviating from the opinion of the Disciplinary Board, the Secretary General states that the Disciplinary Board had no grounds to suppose that the guilt, as well as the facts of the offence referred to in the court judgment, had not been sufficiently established and that it was entitled to disregard that judgment.

68. The *res judicata* effect precludes questioning a judgment, except by means of the remedies provided for that purpose. This means that the existence of the alleged offence, its

qualification and the appellant's guilt must be recognised by all, including the Council of Europe.

69. The report of 16 February 2018 referring the matter to the Disciplinary Board clearly indicated that the breaches allegedly committed by the appellant were based on his final criminal conviction. The second set of disciplinary proceedings constituted new disciplinary proceedings - and not a re-opening of the first set of disciplinary proceedings - in which the Disciplinary Board was called upon to rule on the breaches which the appellant was alleged to have committed because of his criminal conviction. The Disciplinary Board, however, did not consider the reasons why it had been asked to give a decision in this second set of disciplinary proceedings and, on the contrary, merely referred to the assessment it had made of the same facts in the initial disciplinary proceedings, without attaching any weight to the judgment handed down by the Criminal Court.

70. In the light of the foregoing, the Secretary General maintains that he was perfectly justified in departing from the Opinion issued by the Disciplinary Board in the second set of disciplinary proceedings and in concluding that the appellant's criminal conviction warranted disciplinary action.

71. In so doing, he gave an exhaustive explanation for his decision, setting out the reasons why dismissal was justified in the case of the appellant.

72. The Secretary General relied, *inter alia,* on Articles 12 and 25 of the Staff Regulations.

73. With regard to the grounds for his decision to dismiss the appellant, the Secretary General states that it was his opinion that, based on the offences of which the appellant had been found criminally liable, he had not behaved in the manner required of an international civil servant and had not demonstrated the integrity and respect for human dignity that the Council of Europe demands of its staff. In his view, the criminal conviction showed that the appellant had failed to comply with the basic ethical principles of integrity and respect for the dignity of others and that he had not been able to adjust his behaviour towards his female colleagues, whereas, as noted by the Criminal Court, the failings in question related to a professional context in which the appellant had already shown significant behaviour problems as regards his conduct towards women.

74. The Secretary General contends that the criminal acts sanctioned had to be taken into account in view of the specific nature of the duties performed by the appellant in the fire safety sector and which could imply physical contacts with women for professional purposes (including resuscitation and first aid).

75. The acts which had warranted the appellant's criminal conviction were therefore considered incompatible with his duties, which required exemplary probity and absolute trust in the actions of the staff member performing such duties.

76. The Secretary General further considers that the appellant's conviction for sexual assault had adversely affected the Organisation's reputation, in particular vis-à-vis its external service provider, and was morally prejudicial to the Council of Europe.

77. The Secretary General believes that the appellant's final criminal conviction was such as to cause serious prejudice to the Council of Europe under Article 25 of the Staff Regulations.

78. Lastly, the Secretary General considered that the conduct resulting in the appellant's conviction was in breach of Articles 1 and 2 of Rule No. 1292 on the protection of human dignity at the Council of Europe prohibiting all forms of sexual harassment in the workplace or in connection with work in the Council of Europe, and of Article II. 4 of the Charter on professional ethics of 15 July 2005. The fact that there existed, at the time of the facts at issue, a relationship of authority between the victim of the sexual assault and the appellant was an aggravating circumstance, furthermore.

79. The foregoing considerations were amply set out in the Secretary General's decision to dismiss the appellant. It therefore appears to have been supported by a full statement of reasons and shows that the choice of disciplinary measure was sufficiently justified. The Secretary General has not overstepped the discretion allowed him, therefore.

80. As to whether the decision to dismiss the appellant was in compliance with the internal regulations, the Secretary General notes that the appellant does not explain his allegation that the Secretary General punished him for acts that did not fall within the framework set in the report referring the matter to the Disciplinary Board.

81. It must be noted that the report referring the matter to the Disciplinary Board was based on the appellant's criminal conviction resulting from the judgment handed down by Strasbourg Criminal Court on 23 May 2017. There is no question that it was because of this criminal conviction that the appellant was disciplined. The terms of the decision to remove the appellant from his post are very clear on this point.

82. The Secretary General therefore concludes that the decision of 25 May 2018 by which he imposed the disciplinary measure of removal from post was not in any way unlawful.

II. THE TRIBUNAL'S ASSESSMENT

83. The Tribunal points out that the obligation to give reasons for any decision adversely affecting a person is intended to provide the staff member concerned with sufficient information to enable him or her to ascertain whether that decision is well founded or whether it suffers from a defect that would enable him or her to challenge its lawfulness.

84. In disciplinary matters, the question as to whether the reasoning for the decision to punish a staff member meets the above-mentioned requirements must be assessed not only in the light of its wording but also in the light of its context. In this respect, the Tribunal notes that if the sanction imposed on the staff member is ultimately more severe than the one suggested by the

Disciplinary Board, the authority’s decision must specify in detail the reasons which led it to depart from the opinion issued by the Disciplinary Board.

85. In the present case, it should be noted that the Disciplinary Board did not propose any sanction against the appellant yet, in the contested decision of 25 May 2018, the Secretary General decided to impose the most severe punishment provided for in Article 54, paragraph 2, of Part VI of the Staff Regulations, namely removal from post. In those circumstances, the Secretary General should have set out the reasons for his decision in detail.

86. The fact is, however, that, firstly, the Secretary General did not explain why he considered it necessary to punish the appellant when the Disciplinary Board had not recommended any disciplinary action against him.

87. The obligation to give reasons is all the more imperative in the case of the respondent as not only did he apply one of the disciplinary measures provided for in Article 54, paragraph 2, of Part VI of the Staff Regulations but he also opted for the most severe measure, namely removal of the staff member concerned from his post. Such a decision, which had serious and irreversible consequences for the staff member concerned, ought to have been supported by a detailed and enhanced statement of reasons yet in this case it was not.

88. In the decision complained of, the Secretary General merely points out that the final criminal conviction for sexual assault through the Criminal Court judgment of 23 May 2017 adversely affects the Organisation's reputation, in particular vis-à-vis its external service provider, and is prejudicial to the Council of Europe.

89. Such an explanation in the context of the present case does not meet the requirements of a detailed and enhanced statement of reasons explaining why a disciplinary measure, in this case the most severe one, was called for, even though the Disciplinary Board took the opposite view.

90. Secondly, the Tribunal notes that it is for the respondent to decide, in the exercise of his discretion, whether the acts in question constituted a breach of the appellant’s obligations within the meaning of Article 54, paragraph 1, of Part VI of the Staff Regulations and, if so, to impose on him the penalty proportionate to the wrongdoing.

91. In this respect, and in assessing whether the disciplinary measure imposed was proportionate in relation to the seriousness of the facts established, the respondent was required to have regard to a number of considerations, including circumstances that might mitigate or aggravate the staff member's conduct, in determining the seriousness of the wrongdoing and in deciding on the most appropriate disciplinary measure.

92. As it turns out, however, there is nothing in the decision complained of to show that the most severe disciplinary measure was the most appropriate one. The obligation to provide an enhanced statement of reasons in the contested decision was more imperative here given the length of time for which the staff member had served in the Organisation.

93. In this respect, the Tribunal considers that the argument put forward by the Secretary General at the hearing to the effect that a case-by-case review to establish the most appropriate sanction was merely a formality should be rejected.

94. The fact that he had recourse to the most severe disciplinary measure placed an obligation on the respondent to give sufficient and detailed reasons why the only fitting punishment for the alleged acts was removal from post and not one of the other sanctions provided for in Article 54, paragraph 2, of Part VI of the Staff Regulations. A suspended criminal sentence was certainly something that needed to be considered by the respondent when adopting a disciplinary measure; in those circumstances, however, the decision imposing the sanction should have set out the reasons why the most severe measure was the only appropriate one, yet it did not do so.

95. In the absence of an adequate statement of reasons, therefore, the Tribunal is unable to exercise the scrutiny necessary to determine whether the disciplinary measure of removal from post was proportionate to the offences allegedly committed by the appellant.

96. The Tribunal does not underestimate the importance of the fight against harassment, especially when it comes to sexual harassment of a subordinate, one who is also in a vulnerable position professionally speaking. As the Chair of the Tribunal has already pointed out in her Order of 20 June 2018 (paragraph 33 above), however, this fight must always be conducted in accordance with the rules.

97. Having reached the conclusion that the decision of 25 May 2018 must be set aside, the Tribunal does not consider it necessary to examine the other grounds and arguments put forward by the appellant in this appeal.

III. ON THE CLAIMS FOR REIMBURSEMENT OF THE COSTS OF THE PROCEEDINGS

98. The appellant seeks by way of pecuniary damage a sum equal to his lost earnings, as from the date on which he was removed from his post. He is also seeking 15,000 euros for non-pecuniary damage and 3,000 euros in costs.

99. The Secretary General asks that the Tribunal dismiss the appellant’s claims for compensation.

100. The Tribunal notes that under the terms of the second sentence of Article 60, paragraph 2, of the Staff Regulations, “In disputes of a pecuniary nature, it shall have unlimited jurisdiction” and that, according to the last sentence in the same article, the Tribunal “may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.”

101. The Tribunal accordingly orders the Secretary General to pay to the appellant all the salaries that he would have received had he not been removed from his post. The Tribunal does

not consider, however, that a sum should be paid for non-pecuniary damage. As to the costs, the appellant is entitled to full reimbursement of the sum claimed.

IV. CONCLUSION

102. In conclusion, the decision complained of is annulled. Consequently, in respect of pecuniary damage, the appellant is entitled to be paid all the salaries which he would have received had he not been removed from his post and to the payment of 3,000 euros in costs.

For these reasons, the Administrative Tribunal:

- Sets aside the impugned decision;

- Declares that the appellant is entitled to payment of the salaries which he would have received had he not been removed from his post and to the payment of 3,000 euros in costs.

Adopted by the Tribunal in Strasbourg on 26 March 2019 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 2 April 2019, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
S. SANSOTTA	N. VAJIĆ