CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 624/2019
(Jean-Michel MARTZ 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 Jean-Michel Martz, lodged his appeal on 31 October 2019. On 4 November 2019, the appeal was registered under No. 624/2019.

2. On 5 December 2019, the Secretary General forwarded her observations on the appeal. The appellant responded by submitting observations in reply.

3. The public hearing took place in the court room of the Administrative Tribunal in Strasbourg on 28 January 2020. The appellant was represented by Maître Grégory Thuan Dit Dieudonné, member of the Strasbourg Bar, 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 Ms Ine De Coninck, both administrative officers in the Legal Advice Department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

4. At the time of the events, the appellant was a Council of Europe staff member in grade C3, employed in the Registrar of the European Court of Human Rights (hereafter "the Court"). Between 2011 and 31 December 2015, he worked alongside a particular colleague (hereafter "the colleague"). It appears from his annual appraisal reports for the period 2013-2018 that the appellant had fully satisfied the requirements of the post. In the 2018 appraisal report, the appellant's line manager (n+1) stated, on 26 February 2019, *inter alia*:

> "In the course of this year, [the appellant] fully succeeded in performing all the tasks entrusted to him with the professionalism and attention to detail that we have come to expect from him… I would also like to mention his attentiveness to the needs of others, there having been many occasions when he made himself available, thus enabling the team… to fully achieve its mission whilst still managing to perform his own day-to-day tasks…
>
> I have heard only positive comments about his dedication and the exemplary professionalism with which he attends to the everyday tasks of the Registry. I would like to take this opportunity to thank him sincerely for the commitment that he has shown, day in, day out, and to encourage him to keep up the good work."

The same day, the appellant's senior manager (n+2) noted, in particular:

> "[The appellant] is a conscientious, meticulous and highly dedicated staff member. (...) He is always willing to lend his colleagues a hand or stand in for them, and help out at official events. He works with all his colleagues in the Court's Registry to ensure that the job gets done in a streamlined and efficient manner. (...) He is attentive to everyone's needs and always happy to rearrange his work schedule if necessary. (...) He is also ever willing to learn and take on new tasks. (...) [The appellant] has fully embraced the challenges of multi-skilling and is eager to develop his personal and professional skills. He is not afraid to evolve and endeavours to get the best from the training courses he attends (…)".

5. In the meantime, on 24 August 2018, the colleague reported that his car had been damaged in the Court's car park; the following day, he filed a complaint with the French police, naming the appellant as a suspect.

6. On 21 September and 5 October 2018 respectively, the Director of the Department of Human Resources (hereafter "DHR") met with the appellant and his colleague. The latter stated during the interview that there had been other incidents as well and that an anonymous letter on the Court's official letterhead had been sent to his wife, claiming he had been unfaithful to her. He shared his suspicions that the appellant was to blame for all these incidents.

7. On 2 November 2018, the Deputy Secretary General launched an internal inquiry pursuant to Instruction No. 51 of 10 June 2006 on internal inquiries in order to clarify the various allegations against the appellant. In the course of the inquiry, hearings were held

with various Council staff members, among them the appellant's line managers and colleagues, including the one who had reported the incidents in question.

8. Those conducting the inquiry concluded, in their report dated 15 February 2019, that the allegations were founded and that they warranted one of the disciplinary measures provided for in Article 54, paragraph 2.a to f, of the Staff Regulations. They recommended that the Deputy Secretary General institute disciplinary proceedings against the appellant. Those conducting the inquiry noted in particular:

> *"...*
>
> ***III. THE FACTS***
>
> *7.2 There was wide consensus among witnesses that [the appellant] was a staff member dedicated to his work. His ability to focus on his professional tasks, to go the extra miles, his productivity and his contribution generally to attaining the Registry's goals were acknowledged. They mentioned that his communication with other colleagues was terse at times. According to [his superior], [the appellant] had a high opinion of his professional capacities and a tendency to seek to be commended while expecting managers to belittle the work of other colleagues.*
> *...*
> *9. [The appellant]'s first testimony*
> *...*
> *9.5 ... When confronted with a copy of an anonymous letter addressed to [his colleague]'s spouse ...,, [the appellant] denied that he had anything to do with it.*
>
> *9.6 When asked whether he could remember if he was present on the Registry's car park on 24 August 2018, [the appellant] replied that he could not. [He] was given an oral description of the CCTV footage provided by the SSS ... and was asked to comment. [The appellant] replied that he understood that the footage only showed him talking a shortcut through the car park. ...*
>
> *...*
>
> *10. [The appellant] s second testimony*
>
> *10.1 On 23 January 2019 [the appellant] contacted [the Director General of Administration] to request a second interview explaining that he wanted to repent and recant the statements he made during his first testimony.*
>
> *10.2 On 28 January 2019 the inquiry heard [the appellant] for the second time. ... [The appellant] admitted having sent out the anonymous letter and to having scratched [his colleague]'s car on 24 August 2018. He denied any involvement in any of the other incidents that [his colleague] had complained of. He apologised and said that he wanted to make amends for the misconduct that he admitted to ...*
>
> ***IV. THE ASSESSMENT***
> *...*
> *17. [The appellant]' first testimony*
> *...*
> *17.4 As regards [the appellant]'s replies to the inquiry's questions concerning the incident which took place on the Registry's car park on 24 August 2018, the inquiry cannot but highlight that [the appellant's] demeanour was hardly that of a person who firmly knew that he was innocent. To the factual finding that he was wearing a pair of white trousers, [the appellant] objected that he did not own any white trousers and later withdrew that statement saying that he does indeed own a pair of cream-coloured ones. Having been made aware of what is seen of the CCTV footage, [the appellant]'s only comment was that he took a shortcut through the car park, which, in his view, did*

not incriminate him in any way, and that he was wondering how many other people did the same on that day. To the question whether in this case he suspected somebody else, [the appellant] indicated that it was not his job to suspect anyone. [The appellant] refused to say if he thought that a staff member who scratched of his/her colleague should be sanctioned and in what way. When asked whether he had any other comments, [the appellant] announced that he was going to sue [his colleague] for slander.

18. [The appellant's] second testimony

18.1 The inquiry is satisfied that [the appellant] admitted to the fact that he drafted and sent out the anonymous letter addressed to [his colleague's] spouse to their common domicile. The inquiry is equally satisfied that [the appellant] admitted to the fact that he did indeed scratched [his colleague's] car on 24 August 2018. He apologised several times for having carried out these acts.

...

V. CONCLUSIONS

19. The inquiry comes to the following conclusions:

• [The appellant's colleague's] account of the facts and his description of the circumstances underlying his accusations against [the appellant] were coherent, consistent and authentic. There is no indication that [the appellant's colleague] was untruthful when he first complained of the string of incidents to his hierarchy and in his statements made during the inquiry.

• While it could not be ascertained that the incidents, other than the scratched car and the anonymous letter [the appellant's colleague] complained of, had been committed by the same person, and while the inquiry could not reveal the identity of the perpetrator(s), they make clear that [the appellant's colleague] has been targeted by malicious acts amounting to psychological harassment.

• [The appellant's colleague's] account of his conflictual working relationship with [the appellant] during the time they worked together ... is truthful. It has been supported by a corroborating body of evidence gathered within the context of this inquiry.

• By contrast, [the appellant's] testimony minimised the proportions of the conflict which existed between himself and [his colleague]. ...

• The video footage examined by the inquiry showed that [he] was present on the Registry's car park on 24 August 2018 shortly before 12 a.m.; ... that, despite the fact that his body is partially hidden by [his colleague]'s car, his upper arm can be seen moving when he passes alongside [the] car; that, considering that there was an object in his hand, it is very likely that this movement was intended to scratch the car.

• [The appellant] has been given the opportunity to provide an explanation of his errands on the way to his own car at that time of the day. ...

• During the second interview, which [the appellant] requested at his own initiative, [he] admitted that he had scratched [his colleague]'s car on 24 August 2018 and that he had drafted and sent out the anonymous letter via the Court's distribution system, using the Court's official template, to [his colleague's] spouse at their home. He maintained that he was not involved in any of the other incidents [his colleague] had complained of.

• Despite efforts to uncover other versions of as to how and by whom the damages to [the appellant]'s colleague car were carried out, no other plausible explanation has arisen from the inquiry.

...
• *... the inquiry acknowledges that [the appellant] chose eventually to make amends and admit that he scratched [his colleague's] car on 24 August 2018 and that he had sent the anonymous letter to [his colleague's] spouse. The inquiry is also satisfied that [the appellant] did admit do those malicious acts without being submitted to oppressive or misleading questioning and without being offered any inducement and subjected to any threats. Finally, the inquiry takes note of the fact that [the appellant] has repeatedly said that he regretted committing those acts."*

9. On 24 April 2019, the Deputy Secretary General, after receiving the report dated 14 March 2019, referred the matter to the Disciplinary Board, together with a report in which she concluded that the two acts complained of were punishable under Article 54, paragraph 2.c to f, of the Staff Regulations.

10. On 27 June 2019, the Disciplinary Board held a hearing which one of the Board members was unable to attend for work reasons. He was not replaced by a substitute.

11. On 2 July 2019, the Board gave its opinion, signed by all its members, including the one who had not been present at the hearing, and unanimously recommended that the appellant be removed from his post. It noted in particular:

"...
II. SUMMARY OF THE FACTS AND PROCEDURE UNDERLYING THE REFERRAL

...

12. In so far as relevant for the purposes of the present case, before the Board, in the first interview [the appellant] was shown the anonymous letter, in response to which he submitted that he had no comment to make. As regards the car incident, he reacted in an evasive manner, in response to which he was provided with a detailed verbal description of the video footage of his movement on the Court's car park and in the proximity of the damaged car on the day of the incident. According to the report when asked what he would consider an adequate sanction for the act of scratching a colleague's car, [the appellant] responded that 'cela ne l'intéresse et ne le regarde pas'. The report characterised his demeanour during the interview as 'a mix of obsequiousness, withdrawal and defiance'.

13. The second interview was held in response to [the appellant's] request of 23 January 2019 addressed to the DGA. In that request, [the appellant] stated inter alia:

'Je souhaite revenir sur mes déclarations et être honnête avec vous, (...) et avec l'administration.

(...)

Avec toutes mes excuses pour ne pas avoir été franc du collier avec vous tous, vous ne méritiez certainement pas cela et je le regrette infiniment.

(...)

Je vous assure de toute ma franchise dès maintenant, ainsi que mes regrets les plus sincères.'[1]

[1] "I wish to retract my statements and be honest with you, (...) and with the Administration. (...) I apologise for not having been completely frank with you all, you certainly didn't deserve this and I am very sorry. (...) I assure you that I will be straight with you from now on. Please accept my sincere apologies."

14. In the second interview, [the appellant] admitted having sent the anonymous letter and having been the perpetrator of the car incident. He denied any involvement in any of the other alleged incidents, apologised for the misconduct admitted to, and stated that he wished to make amends in that regard.

15. The inquiry concluded that the behaviour to which [the appellant] had admitted constituted misconduct warranting one of the disciplinary sanctions set out in Article 54 § 2 (a) to (f) of the Staff Regulations. It accordingly recommended that disciplinary proceedings be instituted against him.

16. [The appellant]'s written comments on the report ... commence with the following passage:

'(...) [J]e tiens à réitérer les regrets sincères que j'ai exprimé (...) lors du deuxième entretien que j'ai eu, (...) dans le cadre de l'enquête interne me concernant. Je regrette profondément les deux actes dont je me suis rendu coupable (...), et je suis conscient de devoir être sanctionné pour cela.

Je suis en général d'accord avec les conclusions du rapport d'enquête. J'aimerais cependant apporter quelques précisions sur les circonstances qui m'ont amené à me livrer à ces actes regrettables, non pas pour chercher des excuses mais pour donner une explication de mon comportement.'[2]

17. [The appellant] then comments on the situation at his workplace, including the division of work between [his colleague] at the relevant time, the role of their manager ..., and an incident indicative of a vulgar manner allegedly employed by [his colleague] in certain communications.

18. The comments of [the appellant] continue with the following:

'C'est à la suite de cet incident que j'ai envoyé la lettre anonyme et, plus tard, que je me suis livré aux dégradations sur sa voiture dans le parking du PDH. Je reconnais tout à fait que c'était une réaction absurde et totalement inappropriée. Il faut dire qu'à cette époque, j'avais beaucoup de problèmes familiaux et j'étais en grande détresse sur le plan psychologique. Depuis lors, je me fais suivre régulièrement par un psychiatre.

(...)

Je vous informe que je suis prêt à présenter des excuses formelles à [mon collègue] pour ces actes. Je suis également prêt à prendre en charge les frais qu'il a pu avoir du fait des dégradations que j'ai causées à son véhicule. Mon seul désir est à présent de continuer à travailler pour cette Organisation que j'aime, en harmonie avec mes collègues.'[3]
...

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[2] "(...) [I] wish to reiterate the sincere regret I expressed (...) during the second interview I had, (...) in the context of the internal inquiry in relation to myself. I deeply regret the two acts that I committed [...], and I realise that I must be punished for them.

In general, I agree with the findings of the inquiry report. I would, however, like to provide some clarification on the circumstances that led me to commit these regrettable acts, not because I'm trying to excuse them but because I wish to explain my behaviour."

[3] "It was following this incident that I sent the anonymous letter and later on, caused the damage to his car in the Court car park. I fully acknowledge that this was an absurd and totally inappropriate reaction on my part. I should point out that, at the time, I was having major family problems and suffering severe mental distress. Since then I have been seeing a psychiatrist.

(...) I would like to inform you that I am prepared to formally apologise to [my colleague] for my actions. I am also prepared to cover any costs he may have incurred as a result of the damage I caused to his vehicle. My only wish now is to continue working for this Organisation that I love, in harmony with my colleagues."

IV. HEARING

31. [The appellant] was not proud to appear before the Board. He acknowledged having sent the anonymous letter and having committed the car incident. These acts were ugly and were and would always remain on his conscience. They did not correspond to the education he had received. [The appellant] admitted having disappointed the Organisation, those who had given him an opportunity, those involved in the matter, as well as himself. He was sorry for what he had done and was seeking the 'chemin des repenties', to apologise to the family of [his colleague], to repair what could be repaired, and to be pardoned by the Organisation by being given a second chance.

32. He referred to difficulties in his collaboration with [his colleague] and to his response of taking on too much of a workload, which had ultimately resulted in him falling ill. He had had a lot of respect for his manager ... but had perceived that [he] had let him down. As a result, ha had isolated himself, had suffered and had ultimately failed emotionally to handle the situation. He acknowledged that he had committed wrongs, for which had could provide an explanation but no excuse, and for which he deserved a sanction.

33. As for the anonymous letter, it had been sent in 2017, in response to a conversation he had overheard in a corridor, which according to [the appellant] had to do with [his colleague] speaking in an explicit way about a colleague of the opposite sex ... [The appellant] had two sisters and he found such a way of speaking to be unacceptable. He realised with hindsight that the right way would have been to say this to [his colleague] directly.
...
35. In relation to [his colleague], he was prepared to apologise and to provide indemnity. He had not done so yet because their current communication was reduced to the barest minimum and he did not know how to proceed without risking making a mistake. He would welcome assistance from the Organisation ... in that respect.
...
37. [The appellant] considered that in general he got on with colleagues well and that he was good at taking lessons from errors committed. He wished to apologize and then turn the page, hoping in the future to have a normal life and a normal relationship with [his colleague] as with any other colleague, although not necessarily going for coffee together. He had a wife who had left her home country and her work there in order to be with him. He did not want to put that in jeopardy.

38. As regards the legitimate means available within the Council for the resolution of tense and frustrating situations, [the appellant] submitted that, once he had understood that there were other solutions than taking on more workload than he could cope with, he had approached the Council's occupational doctor and had sought psychiatric help. His condition had improved, his situation at work was good and he had taken on a new responsibility, following guidance by superiors.
...
V. THE BOARD'S ASSESSMENT AS TO THE CONDUCT OF [THE APPELLANT]
...
44. The Board is of the opinion that the gravity and circumstances of this misconduct are to be examined and taken into account in the determination of the appropriate sanction. With regard to both the acts under considerations, the Board discerns two key elements.

45. In particular, as to the anonymous letter, firstly by sending it on the Court's letterhead, [the appellant] abused an official symbol of the Court. He did so abusing his status which allowed him access to that symbol and to the mailing system of the Court. By sending the anonymous letter out of the Organisation's system, he engaged its image in the eyes of a third party. Secondly, by addressing the anonymous letter to the spouse of [his colleague], [the appellant] involved a family member of his colleague in their essentially work-related conflict and interfered not only with [his colleague]'s private life, but what is more, with the family life of [his] family, with potentially grave repercussions on their two children.

46. As regards the car incident, firstly, the Board views it as a malicious assault aimed at injuring a colleague in the latter's material sphere. This assault took place on the premises of the Organisation where staff are entitled to expect safety in addition to common civic virtues and collegial behaviour in the spirit of the Organisation's principles and values. Secondly, the car incident likewise engaged the public image of the Organisation, through the involvement of the police authorities of the host State.

47. Accordingly, the Board finds both the acts in question extremely serious and takes this seriousness into account as the first factor in forming its opinion as to the appropriate sanction.

48. As to the other relevant factors, the Board finds that the stated motives and objectives of the acts are not entirely comprehensible. The Board has thus examined the surrounding circumstances, including the behaviour of [the appellant] prior to and after the acts in question.

49. The Board notes that the material assembled in the course of the internal inquiry suggests that [the appellant] has had recurrent difficulties interacting with colleagues and/or managers. Should the origin of his conflictual relationship with [his colleague] be the difficulties in their collaboration, the Board notes that that collaboration ended in 2015, that the anonymous letter was sent in 2017 and that the car incident took place in 2018.

...

51. The Board also notes that [the appellant] started to cooperate with the internal inquiry only once it must have become clear to him that the evidence obtained in particular as regards the car incident was overwhelming. Since then, he has been proclaiming regret, remorsefulness and hope. However, until then, his answers had been evasive and his demeanour was found to be a mix of obsequiousness, withdrawal and defiance. This finding corresponds to the Board's own observations and assessment.

52. The hearing before the Board has revealed that [the appellant] is inward oriented and focused on himself. His demonstrated perception of the repercussions of his actions on the third parties involved in this case is very limited and he seems to be completely ignorant of their ramifications on the image of the Organisation.

53. If [the appellant] is sincerely sorry for his actions and willing to make amends, it has not been made clear to the Board why he links the possibility of doing so exclusively to a work context. Taking action on his proclaimed attitude would have been indicative of a genuine regret irrespective of the development and outcome of the disciplinary proceedings.

..."

12. The Disciplinary Board considered that the measures set out in Article 54, paragraph 1.c or d, of the Staff Regulations were merely financial in nature and not proportionate to the seriousness of the acts committed, for which the only possible punishment was the most severe one, namely removal from post under Article 54, paragraph 2.f, of the Staff Regulations.

13. By *ad personam decision* no. 7504 of 22 July 2019, the Deputy Secretary General decided to impose the disciplinary measure of removal from post on the appellant for failure to fulfil his obligations under Article 25 of the Staff Regulations and Articles 1, 4, 6 and 7, paragraph 2, of the Council of Europe Charter of Professional Ethics. Referring extensively to the Disciplinary Board's findings, she gave the following grounds for her decision:

"(…)

Taking into account all the information before her, the Deputy Secretary General is confident that the proceedings before the Disciplinary Board were fair, free from bias, irrelevant or arbitrary factors, procedural irregularities or errors of fact. In the absence of any substantive or procedural irregularity and having regard to the conclusions of the Disciplinary Board regarding punishment, the Deputy Secretary General sees no reason to diverge from the detailed opinion issued by the Disciplinary Board.

(...) Council of Europe staff members have a duty to behave in an exemplary manner at all times and not to tarnish the reputation of the Organisation. In particular, each staff member must at all times respect the law and public order of the host state. (...) Given the length of time for which [the appellant] has served in the Organisation, the Deputy Secretary General agrees with the Disciplinary Board that [the appellant] could not have been unaware of the applicable rules, the substance of which must have been apparent to any reasonably conscientious member of staff.

The Deputy Secretary General believes that [the appellant] has shown a flagrant disregard for his obligations in commenting on the acts of which he is accused and has thus been guilty of serious misconduct which calls for the most severe disciplinary measure. These acts violated Article 25 of the Staff Regulations, as well as Articles 1, 4, 6 and 7, paragraph 2, of the Charter of Professional Ethics of 15 July 2005, are incompatible with the status of staff member of the Organisation and merit the disciplinary measure provided for in Article 54, paragraph 2.f, of Part VI of the Staff Regulations."

14. The decision to remove the appellant from his post took effect on 31 August 2019. Because he had worked for the Organisation for 15 years, however, he was not required to report for duty from the date on which he was notified of the Deputy Secretary General's decision, i.e. 24 July 2019.

15. On 2 August 2019, the appellant lodged an administrative complaint asking for the dismissal decision of 22 July 2019 to be set aside; in his view, the decision was based on the opinion of the Disciplinary Board, which had been improperly constituted, the reasons given for the decision were inappropriate and insufficient and the disciplinary measure was disproportionate to the acts for which he could legitimately be held responsible.

16. On 5 September 2019, the then Secretary General dismissed the appellant's administrative complaint, noting in particular:

"Firstly, you seek to challenge the regularity of the proceedings before the Disciplinary Board. To that end, you cite the absence, at the (appellant's] hearing by the Disciplinary Board, of one of its members, who was unable to attend for work reasons.

It should be noted that this absence in no way affected the regularity of the disciplinary proceedings and the rights granted [to the appellant] during those proceedings.

For it is very clearly explained in paragraph 39 of the Disciplinary Board's opinion that notes were taken by the deputy secretary of the Disciplinary Board throughout the hearing, that these notes were checked and expanded upon by the members of the Disciplinary Board present at the hearing, and that they were forwarded to the absent member for inspection. The absent member was thus in possession of all the information relating to the disciplinary proceedings in question, including the defence arguments presented by [the appellant] at the hearing.

(...)

In the case in question, when [the appellant] was invited to submit written observations and any other information he may have considered relevant to his defence prior to the hearing, he informed the Disciplinary Board that he did not wish to make any further submissions or call any witnesses and that he would confine himself to the statements he had made in the course of the internal inquiry and before the Deputy Secretary General (...). ...) This proves that [the appellant] himself considered that the case file before the members of the Disciplinary Board was a proper reflection of his defence arguments and that he did not intend to raise any new arguments at his hearing.

The fact that a member of the Disciplinary Council was not present at the hearing did not in any way adversely affect [the appellant], therefore. Insofar as this member had access to a written record of [the appellant's] hearing, [the appellant] was in no way prevented from fully presenting his defence. Likewise, the member in question was able to form an opinion on the basis not only of what was said at the hearing but also of the other evidence in the file. [The appellant], furthermore, raised no objections to the fact that one of the Disciplinary Board members was absent when it was pointed out at the hearing on 27 June 2019.

The Administrative Tribunal of the Council of Europe (...) confirms that the absence of a member of the Disciplinary Board at a hearing before the Disciplinary Board in no way renders the proceedings irregular [see] Appeals Nos. 189/1994 and 195/1994 (Ernould I and II v. Governor of the Social Development Fund of the Council of Europe).

(...)

You also seek to challenge the decision to remove you from your post on the ground that it is based on an inappropriate and insufficient statement of reasons. You further contend that the sanction imposed was disproportionate to the failures of which [the appellant] was accused.

(...)

You accuse the Deputy Secretary General of merely rubber-stamping the Disciplinary Board's opinion of 2 July 2019.

In the case in point, however, it should be noted that the Deputy Secretary General exercised the broad discretion available to her in such matters and that, in so doing, she deemed it appropriate to follow the advice of the Disciplinary Board insofar as there was nothing in the case file to justify taking a different approach.

(...)

The Deputy Secretary General, after hearing [the appellant] again on 11 July 2019, accordingly concluded that *"in the absence of any substantive or procedural irregularity and having regard to the conclusions of the Disciplinary Board as to the sanction, [she] sees no reason to diverge from the detailed opinion issued by the Disciplinary Board*" (...)

At the same time, the Deputy Secretary General carefully considered the implications of the [appellant's] misconduct in relation to his obligations.

(...)

In sending the anonymous letter, [the applicant] made improper use of an official symbol of the Court, while at the same time abusing the status which enabled him to gain access to this symbol and to the Court's mail system. Sending the anonymous letter on the Court's letterhead was also contrary to [the appellant's] duty of loyalty to the Organisation. In addition, he interfered in the private life of his colleague, with potentially grave repercussions for the latter's family.

By deliberately damaging the car of the colleague concerned, [the appellant] was guilty of a malicious act intended to cause his colleague material damage.

In acting as he did, [the appellant] failed to conduct himself in accordance with the values of the Organisation as set out in Article 1 of the Charter of Professional Ethics of 15 July 2015 (...)

(...)

Quite apart from the harm done to the Organisation, [the appellant's] conduct necessarily had serious repercussions for the victim.

(...)

Admittedly, [the appellant] has on several occasions expressed regret, and said that he is willing to apologise to his victim and make amends. He has not followed through on that statement, however, even though he had every opportunity to do so irrespective of the progress and outcome of the disciplinary proceedings.

(...)

As to the contention that insufficient allowance was made for the professional difficulties which [the appellant] claims existed between himself and the victim, it should be stressed that, even supposing such difficulties were the cause of the animosity and resentment which led [the appellant] to commit the acts in question, they are not such as to explain or in any way mitigate the seriousness of his misconduct. Indeed, as the Disciplinary Board pointed out in its opinion, [the appellant] had not worked with the colleague concerned since late 2015, whereas the acts were committed at the end of 2017 in the case of the anonymous letter and in August 2018 in the case of the damage to the car. It is difficult to see, therefore, how the misconduct can be attributed to work-related difficulties given the amount of time - several years – that had elapsed between the period when [the appellant] was working with the victim and the time when the acts were committed. No professional difficulties between staff members, furthermore, can justify or excuse committing malicious acts intended to harm a colleague. In any event, [the appellant] could not have been unaware that there were avenues for internal conflict resolution available to him if he felt that he was having problems with the victim in the workplace.

(...)

As regards the proportionality of the sanction of removal from post, it should be observed, over and above all the points already made in the decision in question, that the disciplinary consequences must be commensurate with the harm done to the victim and in line with the Council of Europe's values. The Disciplinary Board and the Deputy Secretary General took the view that sanctions that were merely financial in nature could not be envisaged as they would in no way have been proportionate to the seriousness of the acts committed by [the appellant]. The Disciplinary Board and the Deputy Secretary General were able to assess the precise and particular circumstances of this case and concluded that the seriousness of the acts demanded that the most severe disciplinary measure be imposed.

(...)

It follows from all of the foregoing elements that there has been no breach of the provisions of the Staff Regulations, of other regulations, of the general principles of law or of practice, or any formal or procedural defect, that the decision was not based on an error of fact or law, that all the relevant elements were taken into account, that no incorrect conclusions were drawn from the documents in the file and, lastly, that there has been no misuse of powers."

17. On 31 October 2019, the appellant lodged the present appeal.

II. RELEVANT LAW

18. Article 25, paragraph 1, of the Staff Regulations concerns loyalty and integrity of staff members and reads as follows:

> "1. On taking up their duties, staff members shall sign the following declaration in the presence of the Secretary General:
>
> 'I solemnly declare that I will carry out the duties entrusted to me as a member of the staff of the Council of Europe loyally and conscientiously, respecting the confidence placed in me. In discharging these duties and in my official conduct I will have regard exclusively to the interests of the Council of Europe. I will not seek or receive any instructions in connection with the exercise of my functions from any government, authority, organisation or person outside the Council'."

19. Article 45 of the same text, entitled "Disciplinary measures", states:

> "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."

20. Article 55 on the Disciplinary Board states, *inter alia*:

> "1. A Disciplinary Board shall be set up, consisting of a Chair and four members. The Chair shall arrange for secretarial assistance.
>
> (...)
>
> 3. Within five days of receipt of a report initiating disciplinary proceedings, the Chair of the Disciplinary Board shall, in the presence of the staff member concerned, draw lots from among the names in the above-mentioned lists to decide which four members shall constitute the Disciplinary Board, two being drawn from each list.
>
> (...)
>
> 5. The Chair shall inform each member of the composition of the Board.
>
> 6. Within five days of the formation of the Disciplinary Board, the staff member in question may make objection once to any of its members other than the Chair.
>
> 7. Within the same period any member of the Disciplinary Board may ask to be excused from serving, provided he or she has legitimate grounds.
>
> 8. The Chair of the Disciplinary Board shall, by drawing lots, fill any vacancies.

9. The Chair and members of the Disciplinary Board shall be completely independent in the performance of their duties. The proceedings of the Board shall be secret."

21. Article 56 describes the disciplinary procedure and reads:

"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."

22. Appendix X to the Staff Regulations concerns the Regulations on disciplinary proceedings. The relevant provisions read as follows:

Article 1

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

Article 2

"1. No warning or reprimand shall be ordered by the Secretary General before hearing the staff member concerned.

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 3

"On receipt of the report, the staff member charged shall be entitled to see his or her complete personal file and to take copies of all documents relevant to the proceedings."

Article 4

"At the first meeting of the Disciplinary Board the Chair shall appoint one of its members to prepare a general report on the matter."

Article 5

"1. The staff member concerned shall have not less than fifteen days from the date of receipt initiating disciplinary proceedings to prepare his or her defence.

2. When staff members appear before the Disciplinary Board they shall have the right to submit written or oral observations, to call witnesses and to be assisted in their defence by a person of their own choice."

Article 8

"1. After consideration of the documents submitted and having regard to any statements made orally or in writing by the staff member concerned and by witnesses, and also to the results of any enquiry undertaken, the Disciplinary Board shall, by majority vote, deliver an opinion, stating its grounds, on the disciplinary measure appropriate to the facts complained of, and transmit the opinion to the Secretary General and to the staff member concerned within one month of the date on which the matter was referred to the Board. The time-limit shall be three months where an enquiry has been held on the instructions of the Disciplinary Board.

2. The Secretary General shall take his or her decision within one month; he or she shall first hear the staff member concerned."

Article 10

"(...)

3. The opinion stating grounds provided for in Article 8 shall be signed by all members of the Disciplinary Board."

23. The Charter of Professional Ethics of 15 July 2005 states, in particular:

"1. Council of Europe staff members are expected to base their work-related conduct on a set of ethical values that find expression in the internal rules of the Organisation.

These values are independence, integrity, respect and accountability.

(...)

II. Interpersonal relations and the working environment

(...)

4. Dignity, mutual respect and courtesy

Respect for others, courtesy and politeness should be the rule in interpersonal relations, and no behaviour that undermines human dignity or is contrary to any of these precepts should be tolerated. The working environment should make for frank, constructive and unambiguous communication, also allowing, where necessary, for duly justified professional criticism, which is essential for professional development.

(...)

6. Discretion and respect for privacy

Respect for others' privacy is of prime importance, and this should be borne in mind as far as possible in the management of working time and through the exercise of discretion in respect of personal data. All personal information at the Organisation's disposal must be processed according to the rules on data protection.

7. Use of the Organisation's property and resources

Staff members should ensure that the Organisation's property and resources are used effectively, usefully, economically and responsibly.

> Use of the Organisation's resources for personal purposes {§5} is tolerated in so far as it takes place only exceptionally and on a limited scale, does not interfere with the work of the Organisation, does not tarnish its reputation and incurs only a marginal cost for the Council of Europe.
>
> The Organisation's image and aim should not be used for personal ends other than those generally accepted (indication of the name of one's employer, for instance)."

THE LAW

24. The appellant is seeking annulment of the decision to remove him from his post on the ground that the proceedings before the Disciplinary Board were irregular, there were insufficient grounds for the decision and the punishment was disproportionate in relation to the acts of which he was accused.

He asks to be reinstated in his post with retroactive effect, in grade C3 step 6, and to be reimbursed for lost earnings. He is also claiming compensation in the sum of 10 000 euros for non-pecuniary damage and 4 800 euros in costs.

25. For her part, the Secretary General requests the Tribunal to declare the appeal unfounded and to dismiss it.

I. THE PARTIES' ARGUMENTS

A. The appellant

26. The appellant alleges firstly that the Disciplinary Board which delivered the opinion in the present case was improperly constituted. He maintains that at the hearing on 27 June 2019, the Disciplinary Board sat in the absence of one of its members, who could not attend for work reasons and so was only able to consult the notes of the hearing taken by the Disciplinary Board's deputy secretary. Yet that same Board member participated in the unanimous decision to recommend that the appellant be removed from his post and signed the Disciplinary Board opinion.

27. According to the appellant, who submits that this disciplinary procedure comes under Article 6 of the European Convention on Human Rights guaranteeing the right to a fair trial, the Disciplinary Board should have, in the absence of one of its members, appointed a substitute as it did when the appellant objected to another member on 9 May 2019; failing that, the Chair of the Disciplinary Board could, under Article 55, paragraph 8, of the Staff Regulations, have drawn lots to select a new member. It cannot be considered that, in basing himself on the notes taken by the Disciplinary Board's deputy secretary, the absent member of the Board was in possession of all the information in the case file when forming his personal opinion.

28. The appellant argues that he was heard in a perfunctory manner by a Disciplinary Board that was not fully constituted and that therefore he did not have the opportunity to present his defence thoroughly. The severity of the sanction recommended and

subsequently imposed, however, demanded that particular care be taken to ensure that his procedural rights were respected. The appellant's right to be heard by a properly constituted disciplinary body was violated therefore, and, in his view, that violation rendered the proceedings before the Disciplinary Board null and void; as a result, the Deputy Secretary General's *ad personam decision* is also null and void since that decision to remove him from his post was a measure subsequent to the Disciplinary Board's opinion.

29. The appellant further alleges that the decision to remove him from his post was inappropriate and that insufficient reasons were given for it. He maintains in this respect that any administrative authority disciplining a civil servant is required to give reasons for its decision, and that this has been confirmed by international case law (see ATCE, Kling v. Secretary General, Appeal No. 316/2003, decision of 7 May 2004, paragraph 46, and Brechenmacher v. Secretary General, Appeal No. 591/2018, decision of 2 April 2019, paragraph 87).

30. In the appellant's view, this obligation on the part of the Secretary General to give reasons is amplified when the Secretary General decides to impose the most severe disciplinary sanction on the employee concerned. In this case, however, the Deputy Secretary General merely endorsed the opinion of the Disciplinary Board without giving detailed reasons for her decision. The appellant observes that the Deputy Secretary General pointed out that the appellant had compromised the Organisation's image by sending an anonymous letter on the Court's letterhead to a third party outside the Council and by involving the French police, given that his colleague had complained to them about the damage to his vehicle.

31. Since, however, the letter was anonymous and unsigned, it could not have tarnished the image of the Court or the Organisation in the eyes of the third party, who, besides, was the spouse of a Council of Europe staff member. According to the appellant, the extent to which the conduct was publicised is a significant factor in assessing the damage to the reputation and image of the Organisation. In any event, argues the appellant, the Secretary General has not adduced any evidence to indicate the actual damage caused to the image and reputation of the Organisation.

32. The appellant likewise disputes the seriousness of the repercussions for the victim and his family which, in his view, have not been sufficiently substantiated. He rejects the argument put forward by the Disciplinary Board that he had had repeated run-ins with his colleagues and superiors. The appellant refers here to the positive annual appraisals he has had since coming to work at the Council of Europe.

33. The appellant further maintains that he twice informed the Secretary General in writing that he wished to apologise, but that he did not know about to go about it because all communication between the two staff members had ceased.

34. The appellant alleges that the disciplinary measure imposed on him was manifestly disproportionate (see ILOAT, P v. UNESCO, 6 July 2016, Judgment 3640; ATCE, Brechenmacher decision, cited above, paragraph 91). According to the rules established by

international case law, the seriousness of the misconduct is assessed according to its nature, the number of persons concerned, the duration of the misconduct concerned, its repetitive nature and the consequences for the victim. These criteria must be taken into consideration when determining the measure to be imposed, in particular when consideration is being given to the most severe disciplinary measure.

35. In this case, the two acts in question were clearly isolated events, occurring several months apart. There was no repetition of the behaviour, which was directed at a single individual (see, conversely, ATCE, Bauer v. Governor of the Council of Europe Development Bank, appeal No. 582/2017, decision of 20 June 2019, paragraph 43, and, for comparison, Brillat (II) and Priore v. Secretary General, appeal No. 583/2017, decision of 14 May 2018, paragraph 43). According to the appellant, there was a clear lack of proportion between the seriousness of the misconduct committed and the severity of the disciplinary measure imposed, and the punishment handed down by the Council of Europe's disciplinary body was discriminatory. He submits that the Deputy Secretary General has not adduced any evidence to show in what respect the acts of which he is accused damaged the reputation of the Organisation to such an extent as to justify removing him from his post.

36. The appellant further submits that the disciplinary measure imposed on him was excessive in relation to his own character. In the 15 years that he had been employed at the Council of Europe, he had never been the subject of a disciplinary complaint. Due account should be taken of his conduct over the course of his career, and of all the positive or even glowing appraisals he received, along with the testimonies of his superiors and colleagues. The disciplinary measure also had severe direct consequences both for the appellant and for his family. In effect, the appellant, who does not have a university degree, lost his job at the age of 43, having been forced to leave the Organisation where he had spent 15 years of his working life.

37. The appellant also alleges that the fact that the respondent had recourse to the most severe disciplinary measure placed an obligation on the latter to state the 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 the Staff Regulations. He notes that the Tribunal has made it clear that the requirement to give reasons is more imperative having regard to the length of time for which the staff member has served in the Organisation (see ATCE, Brechenmacher decision, cited above, paragraph 92). In this case, however, the Deputy Secretary General, in justifying her decision to impose the most severe disciplinary measure, reiterated the opinion of the Disciplinary Board, which had itself refrained from providing any explanation, mentioning only that the other sanctions were merely financial in nature and therefore not proportionate to the seriousness of the misconduct committed.

38. The appellant concludes that, in these circumstances and in the light of the Court's case law in disciplinary matters, the decision taken on 22 July 2019 to remove him from his post was clearly in breach of the principle of proportionality. It is therefore unlawful and should be annulled.

2. The Secretary General

39. As to the conduct of the disciplinary proceedings, the Secretary General first observes that there is no obligation for the individual concerned to be heard by the Disciplinary Board, there is no regulatory provision requiring the person to present his or her defence orally and in the context of a hearing, and such defence may take the form of written observations. The Administrative Tribunal, furthermore, has already confirmed that the absence of a member of the Disciplinary Board at a hearing before this body does not render the proceedings irregular (see ATCE, Ernould I and II v. Governor of the Social Development Fund of the Council of Europe, Appeals Nos. 189/1994 and 195/1994).

40. It appears from paragraph 39 of the Disciplinary Board's opinion that notes were taken by the Disciplinary Board's deputy secretary throughout the hearing, that these notes were checked and expanded upon by the members of the Disciplinary Board present at the hearing, and that they were forwarded to the absent member for inspection. The latter was thus in possession of all the information relating to the disciplinary proceedings in question, including the defence arguments presented by the appellant at the hearing, and was therefore able to form an opinion based on what was said at the hearing and also all the other evidence in the file.

41. The Secretary General adds that there is no justification for the appellant's claim that he was heard in a perfunctory manner and that he was prevented from exercising his defence rights properly. There was no breach of the appellant's procedural rights, therefore.

42. The Secretary General points that, as the Tribunal has consistently held in disciplinary matters, it is for the Secretary General to assess what sanction should be imposed. The Tribunal, therefore, cannot substitute its own appraisal for that of the competent authority, which thus has discretionary powers and is not bound by Disciplinary Board opinions (see for example ATCE, Lelegard v. Governor of the Social Development Fund, 29 September 1995, Appeals Nos. 190, 196 and 197/1994 and No. 201/1995, paragraphs 132, 160 and 175-176). Of course, such discretion must be exercised lawfully, and it is from this perspective that a decision to take disciplinary action is subject to review by the Administrative Tribunal.

43. It appears from the decision of 22 July 2019 to remove the appellant from his post that the Deputy Secretary General, after satisfying herself that there were no irregularities in the proceedings before the Disciplinary Board, based her decision on the points made by the Disciplinary Board, which she endorsed, on the serious misconduct alleged against the appellant and on the most appropriate disciplinary action to be taken. The Deputy Secretary General also referred to the incompatibility of the appellant's conduct with the solemn undertaking given by all staff members to the Organisation under Article 25, paragraph 1, of the Staff Regulations, and with the provisions of the Charter of Professional Ethics of 15 July 2005. In this context, the Secretary General points to international administrative case law concerning the obligation on international civil servants not to

damage the reputation of their Organisation (see for example ILOAT, Martínez García v. the International Atomic Energy Agency, 9 July 1998, Judgement 1764, under 9).

44. Reiterating the points made in the decision to dismiss the administrative complaint (see paragraph 16 above), the Secretary General concludes that the appellant's contention that the reasons given for the decision to remove him from his post were insufficient or inappropriate is unfounded.

45. As to the proportionality of the disciplinary measure imposed, the Secretary General notes that this is to be examined in the light of the specific circumstances surrounding the case at hand. In this instance, the misconduct of which the appellant was accused was of undeniable seriousness. The Secretary General also emphasises the intentional nature of the wrongdoing. Accordingly, the Disciplinary Board and the Deputy Secretary General considered that disciplinary measures that were merely financial in nature could not be envisaged as they would be in no way proportionate to the seriousness of the acts committed by the appellant. They duly considered the precise and particular circumstances of the case and concluded that the seriousness of the misconduct demanded that the most severe disciplinary measure be imposed.

46. The Secretary General further observes that the positive appraisals which the appellant received throughout his career do not constitute a mitigating circumstance, as the assessment of his performance in discharging his duties was not relevant to the misconduct of which the appellant was accused. In her view, the appellant's actions ran counter to the core values of the Organisation and his malicious behaviour was severely damaging to its very identity.

47. Consequently, the *ad personam decision* no. 7504 of 22 July 2019 by which the Secretary General ordered that the appellant be removed from his post was not in any way unlawful.

48. In the light of the foregoing, the Secretary General considers that the present appeal is ill-founded.

II. THE TRIBUNAL'S ASSESSMENT

49. The appellant raises three grounds of appeal before the Tribunal: irregularity of the proceedings before the Disciplinary Board, failure to give sufficient reasons for the decision to remove him from his post and disproportionate nature of the disciplinary measure imposed.

A. On the irregularity of the proceedings before the Disciplinary Board

50. The appellant alleges firstly that the Disciplinary Board was improperly constituted. He maintains in this regard that at the hearing on 27 June 2019, one member of the Disciplinary Board was absent for work reasons and so was only able to consult the notes of the hearing taken by the deputy secretary of the Disciplinary Board. Yet he

participated in the unanimous decision to recommend that the appellant be removed from his post and signed the Disciplinary Board opinion.

51. The Tribunal notes that the manner in which the Disciplinary Board is formed is clearly established by Article 55 of the Staff Regulations (see paragraph 20 above), a fact which the appellant, incidentally, does not dispute. The Tribunal further notes that, according to Article 8, paragraph 1, of Appendix X to the Staff Regulations, the Disciplinary Board delivers an opinion, stating its grounds, on the basis of "the documents submitted and having regard to any statements made orally or in writing by the staff member concerned and by witnesses, and also to the results of any enquiry undertaken." In effect, Article 5, paragraph 2, of Appendix X states that when a person appears before the Disciplinary Board, they have the right to submit written or oral observations, meaning that the disciplinary proceedings may be conducted entirely in writing (see paragraph 22 above). The Tribunal further considers that paragraph 8 of Article 55 of the Staff Regulations does not apply since it was a case of a temporary absence of a member of the Disciplinary Board (see ATCE, Ernould I and II v. Governor of the Council of Europe Social Development Fund, Appeals Nos. 189/1994 and 195/1994).

52. In the light of these circumstances, the Tribunal agrees with the Secretary General that the fact that a member of the Disciplinary Board participated in the adoption of the Board's opinion, even though he was not present at the hearing before this disciplinary body, does not render the disciplinary proceedings irregular.

53. It follows that the appellant's first ground of appeal is unfounded and must be dismissed.

B. On the insufficient nature of the explanation

54. The appellant further alleges that the decision to remove him from his post was inappropriate and that insufficient reasons were given for it. In the appellant's view, the obligation on the part of the Secretary General to give reasons is amplified when the Secretary General decides to impose the most severe disciplinary sanction on the employee concerned. In this instance, however, the Deputy Secretary General merely endorsed the Disciplinary Board's opinion without giving detailed grounds for her decision.

55. The Tribunal has held that an administrative body which decides to discipline an official has an obligation to give reasons for its decision (see, for example, ATCE, decision in Brechenmacher v. Secretary General, cited above, paragraph 94). It is settled international case law, furthermore, that when the executive head of an organisation accepts and adopts the recommendations of an internal appeal body, she or he is under no obligation to give any further reasons in his or her decision than those given by the appeal body itself (see ILOAT, M. C. P. J v. World Health Organisation, 3 July 2019, Judgment 4147, under 10).

56. In the present case, the Tribunal notes that the Deputy Secretary General was able to acquaint herself with the appellant's file on receiving the findings of the internal inquiry. Indeed, it was on the basis of the contents of this file that she concluded that the facts established by the internal inquiry and acknowledged by the appellant were such as to warrant one of the disciplinary measures provided for in Article 54, paragraph 2.c, d, e and f, of the Staff Regulations and that, consequently, she referred the matter to the Disciplinary Board (see paragraphs 8 and 9 above).

57. The Tribunal accepts that in her *ad personam decision* of 22 July 2019, the Deputy Secretary General referred, to a large extent, to the facts found by the Disciplinary Board and its considerations, agreeing with the latter that the appellant, given the length of time for which he had served in the Organisation, could not have been unaware of the rules set out in the Charter of Professional Ethics, the substance of which must have been apparent to any reasonably conscientious member of staff. The Deputy Secretary General indicated that she believed the appellant had shown a flagrant disregard for his obligations in commenting on the acts of which he was accused and was thus guilty of serious misconduct which called for the most severe disciplinary measure (see paragraph 13 above).

58. In the light of these circumstances and having regard to relevant international case law (see paragraph 55 above), the Tribunal considers that the *ad personam decision* to remove the appellant from his post was sufficiently reasoned.

59. It follows that the appellant's second ground of appeal is unfounded and must be dismissed.

C. On the disproportionate nature of the disciplinary measure

60. The appellant submits that the disciplinary measure imposed on him was manifestly disproportionate. In his view, there is a clear lack of proportion between the seriousness of the misconduct committed and the severity of the disciplinary measure imposed. He further alleges that the punishment handed down by the Council of Europe's disciplinary body was discriminatory and excessive in relation to his own character, given that the direct consequences of the punishment were very severe both for himself and for his family.

61. Regarding the severity of the punishment, the Tribunal notes that, according to a long line of international precedent, the decision-making authority has discretion in determining the severity of a sanction to be applied to a staff member whose misconduct has been established. However, that discretion must be exercised in observance of the rule of law, particularly the principle of proportionality (see ILOAT, A.F.A. v. World Intellectual Property Organisation, 10 February 2020, Judgment 3953, under 14, with other references; ATCE, sentence Brechenmacher v. Secretary General, cited above, paragraph 91).

62. The Tribunal further notes that, where a disciplinary measure imposed on an official is out of proportion to the subjective and objective nature of the offence, it must be quashed because it is flawed with a mistake of law. Applying that rule calls for special caution when the sanction is dismissal (see ILOAT, Mr S.C. v. the International Telecommunication Union, 29 January 1991, Judgment 1070, under 9).

63. Having conducted a review, the Tribunal acknowledges that the appellant's behaviour was not that which might be expected from an international civil servant. In scratching his colleague's car and sending an anonymous letter on the Court's letterhead to the colleague's wife, the appellant acted very rashly, lashing out because of tensions between himself and a former colleague with whom he had not worked for some time. In the view of the Tribunal, such acts are clearly unacceptable.

64. The Tribunal cannot, however, ignore the fact that the appellant has expressed regret, shown a willingness to apologise (without being given any guidance as to how to go about this) and has offered to cover the cost of repairing the scratch on his colleague's car. Above all, he has also explained his personal situation at the time of the events that led up to his actions, which were more in the nature of an outburst. These circumstantial factors did, incidentally, come to light during the internal inquiry and were disclosed to the Disciplinary Board (see paragraphs 8 and 11 above) yet the latter did not comment on them.

65. In this context, the Tribunal considers that it is not clear from the impugned decision or from the opinion of the Disciplinary Board that, before determining the appropriate sanction, the Disciplinary Board and the Deputy Secretary General considered why removal from post was the only possible and the most appropriate disciplinary measure. In effect, the sanction of removal from post was proposed and adopted without taking into account, in a comprehensive and proportionate manner, on the one hand, the aggravating circumstances, in this case tarnishing the official symbol of the Court and the image of the Organisation and interfering with the private and family life of the appellant's victim and, on the other hand, the mitigating circumstances, namely the appellant's work record, including the positive annual appraisals of his dealings with his colleagues, the positive comments made by some of his colleagues (see paragraph 4 above) and the fact that there were no other verified instances of misconduct.

66. In its opinion, endorsed by the Deputy Secretary General, the Disciplinary Board ruled out the less severe sanctions provided for in Article 54, paragraph 2.c or d, of the Staff Regulations, namely deferment of advancement to a higher step or relegation in step, simply stating that these were merely financial in nature and, consequently, not proportionate to the seriousness of the acts committed and acknowledged by the appellant (see paragraph 12 above). In the Tribunal's view, such penalties cannot be regarded as merely financial, the financial factor being only one aspect of them. In actual fact, there is also a personal administrative element to the sanctions mentioned by the Disciplinary Board and to the downgrading provided for in Article 54, paragraph 2.e, of the Staff Regulations, as they directly affect the professional career of the staff member concerned.

67. In the light of all these considerations, the Tribunal is not convinced that a less severe disciplinary measure than the one recommended by the Disciplinary Board and subsequently imposed by the Deputy Secretary General might not have been commensurate with the misconduct committed and acknowledged by the appellant. It follows that the disciplinary measure decided upon was manifestly disproportionate.

68. In conclusion, the Tribunal considers that the appellant's third ground of appeal is well founded and the decision in question should be set aside.

D. Damage

69. The appellant is seeking payment of wages for the period from the impugned decision to remove him from his post until the date on which the Tribunal delivers its decision. He is also claiming compensation in the sum of 10 000 euros for non-pecuniary damage and 4 800 euros in costs.

70. The Secretary General maintains that the appellant's requests cannot be granted insofar as the present case, as well as all the costs and repercussions it may have generated for the appellant, are a direct result of the appellant's own wrongdoing. The appellant created the situation from which the present dispute arose and no compensation can therefore be awarded to him (see ATCE, Anne Kling v. Secretary General, Appeal No. 316/2003, decision of 7 May 2004, paragraph 50).

71. As to the payment of wages, in the event that the Tribunal should consider awarding the appellant a sum in compensation for the pecuniary damage allegedly suffered, the Secretary General is of the opinion that the appellant's earnings from employment since 2 September 2019 should be deducted from any sum that might be payable.

72. The Tribunal notes that it has unlimited jurisdiction in this matter (Article 60, paragraph 2, of the Staff Regulations). Having heard the arguments of the parties, it notes that, by reason of its decision, the appellant's rights must be restored, including those of a pecuniary nature which cannot be quantified at this stage but must be calculated during the execution phase of the decision and, if necessary, contested through the appropriate channels if the appellant does not agree with the said calculation. Also, the question raised by the Secretary General concerning any earnings the appellant may have received during the period after he was removed from his post relates not to the examination of this appeal but rather to the execution of the Tribunal's decision (see the appeals in la Peña v. Governor of the Council of Europe Development Bank). For its part, the Tribunal considers, in the circumstances of the case, that the appellant has suffered non-pecuniary damage and awards him the sum of 3 000 euros in this respect, and that he is entitled to 4 800 euros for the costs incurred in connection with the present proceedings.

III. CONCLUSION

73. The appeal is well founded, and the *ad personam decision* of 22 July 2019 must be set aside.

74. The appellant is entitled to have his rights restored, including those of a pecuniary nature. He is also entitled to the sum of 3 000 euros for non-pecuniary damage and to the sum of 4 800 euros to cover the costs incurred in connection with the present proceedings.

For these reasons,

The Administrative Tribunal:

Declares the appeal founded and sets aside the impugned decision;

Orders the Secretary General to refund the wages to which the appellant is entitled;

Orders the Secretary General to pay the appellant the sum of 3 000 euros for non-pecuniary damage, and the sum of 4 800 euros to cover the costs incurred in connection with the present proceedings.

Adopted by the Tribunal by videoconference on 16 March 2020 in accordance with Rule 42 of the Tribunal's Rules of Procedure and delivered in writing on 6 April 2020 in accordance with Rule 35, paragraph 1, of the said Rules, the French text being authentic.

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