

Appeal No. 766/2024

L. D. (III)

v.

Secretary General of the Council of Europe

JUDGMENT

Rights to procedural fairness – Access to the evidence on which an administrative decision is based – Decision to take no further action on a complaint of harassment – Right of the alleged victim of harassment to receive a copy of the investigation report, with due respect for the confidential nature of the witness statements and the anonymity of the witnesses – Possibility of providing a faithful summary of the statements taken, preserving the content of the testimony – **Investigation opened following a complaint of harassment** – Responsibility of the Director of Human Resources to supervise the investigation (paragraphs 9, 21 and 50 of the Rule on investigations, read in conjunction with paragraphs 7.4.1, 7.4.5, 7.4.6 and 7.4.7 of the Policy on Respect and Dignity in the Council of Europe) – Absence of a right for the alleged victim to be assisted by legal counsel when being interviewed by investigators (paragraph 62 of the Rule on investigations) – **Right to be heard prior to any adverse decision** – Right of the alleged victim of harassment to a hearing with the Director of Human Resources before a decision is adopted on the management review – Right to a hearing with the investigators limited in scope to submission of the interviewee's version of events – **Effective nature of the investigation** – Need to conduct the investigation in a way that is consistent, coherent, objective and impartial (paragraph 5 of the Rule on investigations and paragraph 7.4.6 of the Policy on Respect and Dignity in the Council of Europe) – Requirement for the investigators to determine whether there has been wrongdoing (paragraph 76 of the Rule on investigations) – **Reasoning of the decision to take no further action on a harassment complaint** – Sufficiency of the reasons given for a decision based on an investigation report implicitly ruling out harassment, following individual examination of the complaints – **Characterisation of harassment** – Tribunal's limited power of review, restriction to manifest errors – Professional disagreements, interpersonal tensions, criticism of performance insufficient to establish harassment (paragraph 4.4 of the Policy on Respect and Dignity in the Council of Europe).

24 June 2025

The Administrative Tribunal, composed of:

Paul LEMMENS, Chair,
Lenia SAMUEL,
Thomas LAKER, Judges,

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

PROCEEDINGS

1. The appellant, L. D., lodged an appeal on 21 December 2024. The appeal was registered under No. 766/2024.
2. On 10 February 2025, the Secretary General submitted his observations.
3. The public hearing took place on 24 March 2025 in the Palais de l'Europe in Strasbourg. The appellant was represented by Me Steven Airiau, barrister at the Strasbourg Bar. The Secretary General was represented by Sania Ivedi, head of the Litigation Division, assisted by Nina Grange, administrator in the same division.
4. During the hearing, at the request of the Chair and with the agreement of the parties, it was agreed to add the final version of the appellant's second assessment report to the case file. This had been included in the case file for her Appeal No. 761, which in the meantime had been the subject of a [judgment](#) handed down by the Tribunal on 25 March 2025.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

5. The appellant is a former Council of Europe staff member who was recruited on 1 May 2023 through competition No. e17/2021 on a fixed-term contract (CDD) as a B3 assistant lawyer in the Armenian unit of the Registry of the European Court of Human Rights (the Court). The job formed part of the Junior Professional Programme, which is limited to a four-year period. Under the applicable provisions, the appellant could be appointed only after completing a one-year probationary period ending on 30 April 2024.
6. On 19 February 2024, the appellant lodged a formal complaint of psychological harassment with the Director of Human Resources against her direct manager (N+1).
7. Following this complaint, the Director of Human Resources ordered an investigation, which was entrusted to external investigators from the consultancy firm E. H. On 22 April 2024, as part of this investigation, the appellant was interviewed in her capacity as the alleged victim. Previously, in an e-mail dated 15 April 2024, the firm E. H. had stated, in response to a question

from the appellant, that during the interview she could not be assisted by her legal counsel, but that she could be accompanied by a Council of Europe staff member provided that the latter had no connection with the situation being investigated.

8. In a memorandum from the Director of Human Resources dated 30 April 2024, the appellant was informed of the decision taken on 29 April 2024 by the Deputy Secretary General not to confirm her appointment at the end of her probationary period. The appellant's administrative complaint against this decision was dismissed on 5 June 2024 by the then Secretary General, and the application to set the decision aside was dismissed on 25 March 2025 by the Tribunal (Appeals Nos. 761/2024 and 762/2024, L. D. (I and II) v. Secretary General of the Council of Europe).

9. On 28 June 2024, on completing their investigation, the investigators sent the investigation report to the Director of Human Resources. While noting that there had been a distinct lack of communication between the appellant and her direct manager, the investigators concluded as follows:

“We are unable to conclude from the evidence in our possession that [L.D.’s direct manager] deliberately refused to help [L.D.]. With regard to the justification for the assessments made, while we are not in a position to comment on the pertinence of [L. D.’s] analysis, it is clear that the reservations regarding her professional skills are shared by her line managers and would seem to be borne out by a number of concrete examples. In addition, several examples were given of a certain reluctance on the part of [L. D.] to carry out various managerial instructions or, at the very least, [of a tendency] to question them.” (translation)

10. On 3 July 2024, the Director of Human Resources informed the appellant's representative that she had decided to take no further action on the complaint of psychological harassment. The Director's letter read as follows:

“Dear Sir,

Following the filing of Ms [L. D.]’s formal complaint of psychological harassment against (...), dated 19 February 2024, and as agreed at our meeting at the Council of Europe on 22 March 2024, I launched an internal investigation into the allegations made in the complaint. As stipulated in the Policy on Respect and Dignity in the Council of Europe, the investigation into the complaint was outsourced and entrusted to the consultancy firm [E. H.].

After conducting their investigation and gathering a certain amount of information on Ms [D.]’s complaint, the investigators sent their report to the Directorate of Human Resources on 28 June 2024. It appears from this document that the investigators failed to find that there had been proven harassment on the part of (...) within the meaning of the Policy on Respect and Dignity. Consequently, and in accordance with the said Policy (paragraph 7.4.7.), I hereby inform you that I have decided not to pursue the matter further. (...)” (translation)

11. In an e-mail sent the same day, in response to a request from the appellant's representative, the Director of Human Resources declined to forward a copy of the investigation report. The e-mail read as follows:

“The investigation report submitted by the investigators [from E. H.] cannot be forwarded to the individuals involved in the complaint if the investigation did not find that there had been harassment. According to the Policy on Respect and Dignity (paragraph 7.4.7.): ‘If the investigation report does not disclose any disrespectful behaviour, both the person who made

the complaint and the accused person will be notified of the Director of Human Resources' decision not to pursue the matter further. In such cases, no mention of the investigation will be included in the personal administrative files of any staff member concerned.'

I would like to clarify that the investigation report is a deliverable provided by [E. H.]'s investigators to me in my capacity as Director of Human Resources, to enable me to make a decision on the matter. It is not a document to be forwarded to all the parties in adversarial proceedings." (translation)

12. On 4 August 2024, the appellant requested a management review of the decision to take no further action on her formal complaint of harassment and also of the decision to refuse to provide her with a copy of the investigation report.

13. On 5 August 2024, in response to the appellant's request for a management review, the Director of Human Resources decided to grant her request for a copy of the investigation report. That report, from which certain details considered confidential had been removed, in particular those relating to the identity of the witnesses, was sent to her on 20 August 2024.

14. In an e-mail sent the same day, the appellant asked the Director of Human Resources to send her "the full investigation report including the conclusions and recommendations of the firm [E. H.], the interviews with [her N+1] and the witnesses, whose identity will be hidden". She also asked the Director of Human Resources to confirm whether or not she would be taking further action on the formal complaint of harassment.

15. On 26 August 2024, the Director of Human Resources confirmed her decision not to provide the appellant with a copy of the unredacted investigation report and also her decision to take no further action on the formal complaint of harassment.

16. On 19 September 2024, the appellant filed an administrative complaint contesting the decision not to provide her with a copy of the unredacted investigation report (with only the identity of the witnesses removed) and also the decision to take no further action on her formal complaint of harassment.

17. On 21 October 2024, the Secretary General dismissed the appellant's administrative complaint in its entirety as unfounded.

18. On 21 December 2024, the appellant lodged the present appeal.

II. THE RELEVANT LAW

19. The relevant regulatory provisions concerning the applicable procedure in cases of alleged harassment read as follows:

Policy on Respect and Dignity in the Council of Europe adopted by the Secretary General on 21 December 2022

(...)

Harassment

4.6. Harassment is any unwanted, offensive, or abusive conduct or behaviour (including methods of work organisation) which is repeated, sustained or systematic and which, intentionally or unintentionally, is prejudicial to the dignity, integrity, well-being or job security of the person to whom it is directed, and/or creates a humiliating, intimidating or hostile work environment. (...)

Director of Human Resources

5.11. In addition to overseeing the actions of the Directorate of Human Resources, as described above, the Director is the contact person for reports and complaints under this Policy. (...)

Procedure following a formal complaint

(...)

7.4.5. Where an allegation of harassment reaches the Director of Human Resources, either directly by way of a formal complaint from the alleged victim, or via another person where the alleged victim has confirmed to the Director of Human Resources their wish to pursue a formal complaint, the Director of Human Resources will consider whether the allegations justify and require ordering an investigation to be carried out. Where the allegation is of sexual harassment or harassment by the victim's hierarchical superior, then the Director of Human Resources does not have discretion and must order an investigation. (...)

7.4.6. Where an investigation is ordered, it will be conducted by investigators external to the Organisation with relevant experience and expertise. Allegations will be investigated in an impartial, thorough, and timely manner, which is fair to all parties concerned and in which the rights of all parties are fully protected, in particular the due process rights of the accused person. Investigations will be conducted in line with the Organisation's legal framework governing the conduct of investigations; the Council of Europe Regulations on the Protection of Personal Data; and all other relevant confidentiality requirements.

7.4.7. The investigation report, once complete, will be transmitted to the Director of Human Resources, who will redact it if necessary and then transmit it to the accused person to enable them to provide their comments. If the investigation report does not disclose any disrespectful behaviour, both the person who made the complaint and the accused person will be notified of the Director of Human Resources' decision not to pursue the matter further. In such cases, no mention of the investigation will be included in the personal administrative files of any staff member concerned. If, on the other hand, the investigation report discloses behaviour in violation of this Policy, the report will be transmitted, together with the accused person's comments, to the Secretary General. The Secretary General will then proceed in accordance with Article 12 of the Staff Regulations and the implementing Staff Rules. (...)

Rule on investigations adopted by the Secretary General on 22 December 2022

(...)

Purpose

(...)

2. This Rule should be read in conjunction with the CoE's Staff Regulations and Rules, Code of Conduct, the Charter of the Directorate of Internal Oversight, and Speak Up: Council of Europe Policy on reporting wrongdoing and protection from retaliation (Speak Up Policy). Together with the aforementioned texts, this Rule constitutes the internal framework that regulates how reports of wrongdoing will be dealt with. It sets out the basic procedural steps in the investigative process, as well as the main rights and obligations of those involved in the process, and the follow-up to be given to the process.

3. The aim of the investigative process is to examine and determine the veracity of allegations or other indications of wrongdoing, including wrongdoing committed by Secretariat members (which, if established, can be regarded as misconduct) or by other persons in the context of projects and activities organised and/or financed by the Organisation.

4. Any investigative process conducted under this Rule is administrative in nature. (...).

5. This Rule aims to ensure that the investigative process addressing allegations of wrongdoing concerning the CoE's staff, funds, and/or resources are carried out in a consistent and coherent way. It

also aims to ensure that the investigative process is carried out in an objective and impartial manner and in accordance with applicable international investigative standards.

6. Those conducting the investigative process must maintain objectivity, impartiality, independence, and fairness throughout the process and conduct their activities competently and with the highest levels of integrity. (...)

Scope

(...)

9. The Rule applies to any activities carried out by the DIO or the Directorate of Human Resources (DHR) to address reports of wrongdoing affecting the Organisation, in accordance with the Speak Up Policy, Policy on Respect and Dignity in the Council of Europe, or any other applicable legal instruments. References in this text to the functions or responsibilities of the Director of Internal Oversight may refer, *mutatis mutandis*, to functions or responsibilities of the Director of the DHR, where applicable, pursuant to the above-mentioned legal instruments.

10. This Rule shall also apply to any investigative process carried out by external investigators, when engaged by the Director of Internal Oversight to investigate wrongdoing reported under the Speak Up Policy or by the Director of Human Resources to address harassment allegations under the Policy on Respect and Dignity. The terms of any contract between such external investigators and the Organisation shall make specific reference to the present Rule. (...)

Confidentiality

25. The investigative process is confidential. Information gathered in the context of the investigative process will be accessible only by the Director of Internal Oversight and those conducting the investigative process. Access to specific information may be given, if necessary, to the investigation subject or other persons following up on a specific case.

26. Information gathered in the course of any investigative process shall be treated as confidential by all those involved and shall be shared only on a need-to-know basis in conformity with these and any other applicable rules, regulations and policies. (...)

28. However, any person invited to an interview in the context of a preliminary assessment or investigation may seek support and advice from a Secretariat member of their choosing, provided that such person has no connection to the matter; their close family members; a medical professional; and/or, at their own expense, legal counsel. Seeking support and advice in this manner shall not constitute a breach of confidentiality for the purposes of this Rule. (...)

Opening of an investigation

(...)

50. The Director of Internal Oversight may also have recourse to external investigators, if they consider that the provision of such services is required or if foreseen by the Organisation's rules. In the event that investigative activities are to be carried out by external investigators, the DIO shall instruct and supervise the latter and shall inform them of the Organisation's standards for the conduct of investigations. The DIO shall also set a time limit for the submission of the external investigators' report. (...)

54. Those conducting the investigation will endeavour to obtain, review, and record any evidence that may appear relevant to an investigation. They shall make every reasonable effort to verify and corroborate the veracity of the information obtained, such that it can withstand further scrutiny and meet the threshold of the Organisation's standards of proof. (...)

Testimonial evidence

61. The primary means of collecting testimonial evidence is through interviews. (...)

62. To the extent possible, interviews should be conducted by two persons; only one interviewee at a time should be interviewed. An interviewee who is a Secretariat member may be accompanied by a Secretariat member of their choice, provided that the latter is not directly concerned by the investigation and/or there is no conflict of interest. (...)

Absence of an interviewee

67. In the event that a person who is summoned to an interview is absent, at the time the summons is sent, by reason of medically certified illness for a period of 10 calendar days or less, or on approved leave of any duration, the interview may be postponed by a period of time corresponding to the duration of the absence. In the event of absence by reason of medically certified illness for a period exceeding 10 calendar days, the person concerned may be given the option to provide written comments in place of attending the interview. Any claimed inability to attend an interview or provide comments at any stage of the

proceedings shall be supported by a statement from a medical practitioner which confirms the inability to do so. Where such a statement is provided, those carrying out the investigation shall decide whether it is possible to complete the proceedings without carrying out the activity in question. If needed, they can ask the Director of Internal Oversight or the Director of Human Resources, as applicable, to request an independent medical opinion as to whether or not the person is able to attend the interview, provide comments to a report, or cooperate with the proceedings in another way. In the event of any prolonged period of absence jeopardising the completion of proceedings, the DIO can decide to complete the investigation process and report to the Secretary General any limitations to the investigative process caused by such absence. (...)

Completion of an investigation

73. The investigation, including the preparation of the investigation report, must be concluded without undue delay and within the time-limit set for its completion.

74. Any investigation report shall include a summary of the facts established by the investigation, and conclusions as to whether it has been established to the relevant standard of proof that there has been wrongdoing as defined by the Organisation, as well as the nature of the wrongdoing or misconduct and the person(s) responsible.

75. The requisite standard of proof to determine whether allegations are substantiated for the purposes of an investigation is that of clear and convincing evidence.

76. The investigation report shall set out: the investigation activities; the evidence; an analysis of the evidence; any relevant information provided by the investigation subject; fact-based conclusions as to the existence or otherwise of wrongdoing, as defined by the Organisation, or any other established breaches of the internal legal framework; and any financial loss suffered by the Organisation or any other person or body. (...)

81. If the evidence is not sufficient to substantiate the allegations, the Director of Internal Oversight will issue a closure report to the Secretary General. The closure report, which shall cover all aspects of the investigation and justify its conclusions, will as far as possible not contain any information that could serve to identify, whether directly or indirectly, any individual. The Director of Internal Oversight will also inform the investigation subject in writing of the closure of the investigation and provide them with summary conclusions of the closure report. Where possible, the person who made the allegation(s) and, where appropriate, the head of the Major Administrative Entity concerned, will also be informed of the closure of the investigation. (...)

THE LAW

20. In her Appeal No. 766/2024, the appellant asks the Tribunal to set aside the decision to take no further action on her formal complaint of harassment and the decision not to provide her with a copy of the unredacted investigation report (with only the identity of the witnesses removed), as well as the decision to dismiss the administrative complaint by which she challenged those decisions. The appellant also asks the Tribunal to find that her formal complaint of harassment is well founded or, in the alternative, to refer the case back to the Council of Europe for a proper investigation. Lastly, the appellant is seeking EUR 30 000 in compensation for non-pecuniary damage and EUR 12 000 in costs.

21. The Secretary General, for his part, invites the Tribunal to declare the appeal unfounded and to dismiss it.

I. REQUEST TO ORDER THE PRODUCTION OF CERTAIN DOCUMENTS

22. Before it can consider the merits of the case, the Tribunal must rule on the appellant's request that the Secretary General be ordered to provide her with a series of documents, namely:

- the notice of referral to the firm E. H.;
- the specific terms of E. H.'s mandate;

- the documents sent by the Director of Human Resources to E. H.;
- any correspondence sent to E. H. that would help to determine what instructions were given to the firm;
- the contract concluded between the Council of Europe and E. H.;
- the unredacted investigation report (with only the identity of the witnesses removed).

23. The Tribunal observes that the documents whose production the appellant seeks are essentially of two kinds.

24. Firstly, the appellant seeks the production of a series of documents relating to the contractual relationship between the Council of Europe and the investigators E. H. In her request, she argues that such documents are vital in order to ascertain whether her complaint of harassment and the evidence available to her in support of her complaint were communicated in their entirety to E. H. The appellant also submits that the documents requested would help to ascertain the precise terms of the mandate given to E. H. and the legal framework within which it was to carry out its work. According to the appellant, access to the documents exchanged between the Organisation and E. H. in connection with her complaint is necessary to ensure that the investigation was conducted properly, effectively and in accordance with the required standards of professionalism, which she disputes.

25. With regard to the documents in question, the Tribunal notes that according to paragraph 1 of Rule 7 of its Rules of Procedure, it may, at any time, either on its own initiative or at the request of one of the parties, order the production of documents or such other evidence as it deems necessary. In order to assess whether a document is necessary, the Tribunal must determine whether it would be able to rule on all the arguments, in fact or in law, raised by the parties, if it did not have access to the document in question.

26. The Tribunal observes that, to enable it to rule on the complaints raised by the appellant in this regard, it has in its possession all the documents and evidence relied on by the appellant in her dealings with the investigators. From the written submissions in the file, the Tribunal has also gleaned all the information which, in the appellant's opinion, should have been considered when compiling the investigation report. As regards checking that E. H. did in fact take proper account of all those points, the Tribunal is of the view that a reading of the investigation report alone is sufficient for the purposes of such a check, without any need to consult the notice of referral to the firm E. H., the terms of its mandate, or the documents and communications exchanged between the Administration and E. H. As to the contract concluded with the firm, the Tribunal fails to see how the administrative and financial undertakings given under that contract would have any bearing on this examination.

27. Secondly, the appellant requests that the Tribunal order the production of the unredacted investigation report, with only the identity of the witnesses removed. She submits that the redacted version she received does not give the identity of the investigators and does not mention the documents that were sent to E. H. by the Director of Human Resources. It also fails to indicate what questions were put to the witnesses. In addition, the summary of the witness statements is too condensed to understand the context in which the comments were made. Lastly, the recommendations made by E. H. are hidden, making it impossible to discover the firm's stance on the actions described; if recommendations were made, however, that would necessarily indicate that the Organisation's practice was not in line with what the relevant international law requires. The appellant concludes that the lack of information on the above points prevents her from defending herself on the merits.

28. The Tribunal observes firstly that international case law has established the principle that an official must, as a general rule, have access to the evidence on which an authority bases or intends to base a decision that adversely affects them (see Administrative Tribunal of the International Labour Organisation (ILOAT), [Judgment No. 4663 of 7 July 2023](#), M.-C. v. Interpol, consideration 6; ILOAT, [Judgment No. 4839 of 8 July 2024](#), J. (No. 3) v. IOM, consideration 9). According to this case law, “a statement in a staff regulation or other internal document that a report is confidential will not ‘shield a report [...] from disclosure to the concerned official’. Moreover, ‘[i]n the absence of any reason in law for non-disclosure of the report, such non-disclosure constitutes a serious breach of the complainant’s right to procedural fairness’” (see ILOAT, [Judgment No. 3264 of 5 February 2014](#), M.J. v. ILO, consideration 16; ILOAT, [Judgment No. 3831 of 28 June 2017](#), S. (No. 8) v. IAEA, consideration 17). Insofar as the initial decision by the Director of Human Resources to take no further action on her complaint of harassment was based on the investigation report, the appellant was entitled to receive a copy of it.

29. In response to a request to that effect from the appellant, in the context of the management review, the Director of Human Resources initially refused to provide her with such a copy and then provided her with a redacted version. In the Tribunal proceedings, the Secretary General filed an unredacted version of the investigation report to enable the Tribunal to carry out its review. He did so in confidence, however.

30. The Tribunal, which was able to compare the two versions of the report, notes that the only information omitted from the redacted version is, firstly, the names of the witnesses, their gender and certain circumstantial details that would enable them to be identified and, secondly, the recommendations that appear at the end of the report, after the conclusions. Insofar as the appellant refers to other information that might have been omitted from the report, her request is devoid of purpose therefore.

31. Insofar as the appellant’s request relates to the witness statements, the Tribunal notes that those statements are identical in the two versions of the report, apart from, as has just been stated, the identity of the witnesses and identifying information. The appellant accepts, however, the decision not to disclose the identity of the witnesses. To that extent, the request for the production of a full version of the report is likewise devoid of purpose therefore.

32. Furthermore, the Tribunal notes that the obligation to disclose the investigation report must be balanced against the need to respect the confidential nature of the witness statements taken in the course of the investigation into the alleged harassment, not least in order to ensure witnesses’ protection and freedom of expression (ILOAT, [Judgment No. 3995 of 26 June 2018](#), B. (No. 3) v. IFAD, consideration 5; [Judgment No. 4217 of 10 February 2020](#), L. v. IFAD, consideration 4). Accordingly, it may be necessary to balance the need to preserve the confidential nature of the witness statements against the person’s right to an adversarial procedure (Court of Justice of the European Union (CJEU), [judgment of 25 June 2020](#), HF v. European Parliament, C-570/18 P, paragraph 63; see, on the subject of the rights of the person accused of harassment, Administrative Tribunal of the Council of Europe (ATCE), Appeal No. 651/2020, B v. Secretary General of the Council of Europe, [Appeal No. 651, decision of 13 July 2021](#), § 120). To achieve this aim, certain techniques may be used, such as disclosing the substance of the witness statements in the form of a summary, or the redaction (hiding) of some of the content of those statements (ATCE, Appeal No. 651/2020, B v. Secretary General of the Council of Europe, [Appeal No. 651, decision of 13 July 2021](#), § 121; CJEU, [judgment of 25](#)

June 2020, HF v. European Parliament, C-570/18 P, paragraph 66; General Court of the European Union, [judgment of 2 February 2022](#), LU v. European Investment Bank, T-536/20, paragraph 58; General Court of the European Union, [judgment of 26 June 2024](#), PB v. Single Resolution Board, T-789/22, paragraph 193). In this case, the investigation report contains summaries of witness statements. In principle, this approach ensures a balance between the various rights and interests at stake.

33. Insofar as the appellant requests the production of a version of the investigation report in which the statements are set out more extensively, assuming that such a version exists, her request must in any case be dismissed for the above reasons (see ILOAT, [Judgment No. 3995 of 26 June 2018](#), B. (No. 3) v. IFAD, consideration 5). Insofar as the appellant alleges that the summaries of the witness statements are insufficient to enable her to defend herself, this is actually a complaint directed against the investigation report and against the impugned decision of the Director of Human Resources. The Tribunal will return to this below (see paragraphs 68 to 70).

34. Lastly, insofar as the appellant's request relates to the recommendations made by the firm E. H., the Tribunal notes that the Secretary General states in his observations that "while noting that there had been no harassment in this case, the investigators did identify possible areas for improvement in the working conditions in the entity concerned". The Secretary General adds that there is no contradiction between the conclusion that the conduct in question did not constitute harassment and the fact that the general work situation in a department could stand to be improved.

35. The Tribunal, which has seen the full version of the report, can confirm the Secretary General's description of the recommendations. They are indeed recommendations to the Organisation, to help avoid difficulties in communication and management in the future. The non-disclosure of this information is not prejudicial to the appellant. The recommendations are in the nature of general governance considerations and bear no direct relation to her personal situation.

36. In these circumstances, there is no reason to order the Secretary General to produce the recommendations made by E. H.

37. In the light of the foregoing, the Tribunal dismisses the appellant's request for the production of certain documents in its entirety.

38. The Tribunal further considers that there is no need to order the production of certain documents on its own initiative.

II. THE PARTIES' SUBMISSIONS

A. The appellant

39. In support of her appeal, the appellant essentially relies on five grounds: she complains that the Organisation (1) violated the principle of independence; (2) violated her right to be assisted by legal counsel; (3) violated the adversarial principle; (4) failed to ensure that the firm E. H. possessed the necessary experience and expertise; (5) committed a manifest error of assessment in concluding that her allegations of harassment were unfounded.

1. *First ground of appeal: violation of the principle of independence*

40. The appellant submits that, pursuant to the relevant rules set out in the Policy on Respect and Dignity in the Council of Europe and the Rule on investigations, only the Directorate of Internal Oversight (“DIO”) had the authority to conduct investigations into her harassment complaint and, hence, to issue instructions to the firm E. H. Since, in her case, it was the Director of Human Resources who referred the matter to E. H. and supervised its work, the appellant contends that the Organisation disregarded the applicable legal framework. The Director of Human Resources’ actions therefore amounted to a misuse of power and a violation of the principle of independence.

2. *Second ground of appeal: violation of the right to be assisted by legal counsel*

41. The appellant maintains that, in the course of the investigations into her complaint, she was unfairly deprived of the right to be assisted by legal counsel during her interview, in breach of paragraph 28 of the Rule on investigations. She emphasises that the presence of legal counsel was necessary to ensure a fair, rigorous, independent and impartial procedure and to safeguard her rights while her formal complaint of harassment was being examined. The appellant goes on to provide details of the specific harm suffered as a result of that breach: not only was she unable to examine the mandate given to the investigators E. H. and ensure that key documents were disclosed to them, but she was also unable to request the disclosure of certain documents examined by E. H. or to challenge comments made by her direct manager and the witnesses, and identify ambiguities in their statements.

3. *Third ground of appeal: violation of the adversarial principle*

42. The appellant alleges that the procedure is tainted by the fact she was not given the opportunity to challenge or rectify the statements taken and testimonies gathered during the investigation, before the investigation report was finalised. The appellant points out that it was only through the finalised report that she learned of the statements made by her N+1 and the witnesses, and that to this day she does not know what material evidence the investigators relied on to reach their conclusions. As she did not exercise her right to reply, the statements on which the investigators relied remain unverified and the report contains biased conclusions. The appellant supports her arguments, citing the numerous errors, inaccuracies and inconsistencies which, in her opinion, taint the report.

4. *Fourth ground of appeal: lack of experience and expertise on the part of the firm E. H.*

43. The appellant questions whether E. H. possessed the experience and expertise required under paragraph 7.4.6 of the Policy on Respect and Dignity in the Council of Europe. Firstly, she submits that the firm did not possess the necessary competence to conduct an effective investigation into her formal complaint of harassment. She submits that she was only in contact with a “consultant” from the firm, who did not, as such, have the necessary competence and power to conduct an investigation in accordance with the required standards. Secondly, the appellant maintains that by confining itself to “assisting the employer in dealing with the situation and enabling it to decide what action to taken after hearing the parties”, as stated in the preamble to the report, without determining whether or not the conduct in question qualified as harassment, E. H. explicitly acknowledged that its work did not amount to a formal investigation into the harassment complaint. The lack of expertise meant that the investigation

was inadequate and did not meet the expected standards of effectiveness and rigour. In addition, the preamble to the report refers to the French Labour Code, which is not applicable. E. H. thus disregarded the specific obligations imposed by the Council of Europe, and by which the investigation ought to have been guided. Thirdly, the appellant criticises E. H. with regard to the methodology adopted, noting that the report failed to provide a clear and exhaustive list of the evidence examined, contrary to what rigour and transparency require. Fourthly, she challenges the investigators' decision to forego the testimony of R. M., a key witness, on the ground that she did not respond to their inquiries while absent on sick leave. Fifthly, the appellant questions the neutrality and impartiality of the witnesses heard. As these were individuals who had in all probability exercised decision-making power when the appellant was being recruited and assessed, there was clearly a conflict of interests. The appellant also points to the absence in the report of any indication that the investigators checked for potential conflicts of interests. On this point, the appellant concludes that the decision to entrust an investigation to an unsuitable firm constitutes a misuse of power on the part of the Organisation.

5. *Fifth ground of appeal: characterisation of harassment*

44. The appellant submits, firstly, that the investigation report fails to determine whether or not there was harassment. The contested decision to take no further action on her complaint, based on that report, is not sufficiently reasoned, therefore. Secondly, the appellant submits that the Secretary General committed a manifest error of assessment in asserting that her allegations of harassment are unfounded. She details a series of circumstances which, in her view, prove the harassment she suffered at the hands of her direct manager. Given the involvement of other people, including her managers and the head of the Court's Administration, she considers that the harassment was institutional. In connection with this ground of appeal, the appellant asks the Tribunal to rule on whether she suffered harassment.

B. The Secretary General

1. *Violation of the principle of independence*

45. The Secretary General points out that the appellant has misinterpreted the applicable texts. He observes, firstly, that the competence of the Director of Human Resources to deal with formal complaints of harassment is based on section 7.4 of the Policy on Respect and Dignity. He then notes that the relevant provisions of the Rule on investigations, to which the Policy on Respect and Dignity refers, apply to investigations conducted by external investigators hired by DIO or, *mutatis mutandis*, by the Director of Human Resources. Consequently, it was in fact for the Director of Human Resources to order and supervise the conduct of the investigation after the appellant filed her complaint. In this capacity, the Director of Human Resources also had the authority to issue any necessary instructions to the external investigators, including indicating how paragraph 62 of the Rule on investigations should apply with regard to the impossibility of the appellant being assisted by legal counsel during the interview.

2. *Violation of the right to be assisted by legal counsel*

46. The Secretary General submits that the applicable provision, namely paragraph 62 of the Rule on investigations, did not grant the appellant the right to be assisted by her lawyer. Under that provision, the appellant could be accompanied only by a Secretariat member, provided that the latter was not directly concerned by the investigation and that there was no

conflict of interest. According to the Secretary General, the aforementioned paragraph 62, read in conjunction with paragraph 28 of the Rule on investigations relied on by the appellant, allows persons invited to interviews to benefit from the support of legal counsel only before or after the interview. It was not appropriate for a lawyer to be present during the interview. For the purpose of gathering evidence and obtaining each party's version of events, it is sufficient for the staff members concerned to have a colleague with them at the interview for moral support, if they so wish. The Secretary General emphasises here that the purpose of the interview was not to enable the appellant to examine and comment on the investigation process.

47. The Secretary General observes that, in any event, the appellant did not suffer any prejudice as a result of not having her lawyer present when she was interviewed. He points out, firstly, that the appellant benefited from the support and advice of her legal counsel from the time her complaint was lodged and, secondly, that she had the opportunity and time to challenge the content of the witness statements and the evidence used by the investigators, once the investigation report had been finalised.

3. *Violation of the adversarial principle*

48. The Secretary General refutes the appellant's argument that there has been a violation of the adversarial principle, observing that the redacted investigation report communicated to her makes sufficiently precise and detailed reference to all the evidence on which it is based. He further observes that the report was communicated to the appellant on 4 August 2024, i.e. shortly after the decision of 3 July 2024 to take no further action on her complaint of harassment. Having thus been informed in good time of the substance of the statements made by the parties and witnesses, together with all the relevant information gathered during the interviews, the appellant's rights of defence were respected. The Secretary General further observes that the appellant was effectively able to challenge the investigation report in the context of the complaints procedure and then in the present appeal. Although he accepts that the report contains some inaccuracies, the Secretary General considers that these are purely editorial errors that have no bearing on the thoroughness of the investigations carried out or the merits of the investigation report.

4. *Lack of expertise and experience on the part of the firm E. H.*

49. The Secretary General defends the decision to entrust the investigation to E. H. He points out that this service provider was selected as a result of a call for tenders procedure at the end of which stringent checks were conducted to ensure that E. H. offered all the necessary guarantees in terms of competence, objectivity and independence. With regard to the scope of the investigation, the Secretary General states that E. H. was indeed mandated to conduct an investigation in accordance with the regulations applicable within the Organisation, in order to establish whether, following the appellant's complaint, harassment could be held to have occurred. Furthermore, E. H. fulfilled this mandate and succeeded in establishing the facts and giving an opinion on them, enabling the Director of Human Resources to make an informed decision on the appellant's allegations of harassment.

5. *Characterisation of harassment*

50. In response to the appellant's fifth ground of appeal, the Secretary General points out that the Director of Human Resources was justified in relying on the investigation report in taking the contested decision. As the report was the result of an investigation conducted

rigorously, in accordance with the applicable rules, it provided a valid basis for the decision, establishing the facts in detail and commenting on all of the appellant's complaints.

51. As to the appellant's argument that there has been a manifest error of assessment, the Secretary General observes that none of the points made by the appellant is such as to call into question the investigators' conclusions and to warrant revising them. All of the facts put forward by the appellant in support of her allegations of harassment concerned difficulties associated with her professional performance and her behaviour towards her managers. The Secretary General then examines each of these facts only to conclude that they are of no probative value, in particular in the light of the analysis carried out by the external investigators. The Secretary General notes the Tribunal's limited power of review in such matters: in the absence of a manifest error of assessment, there is no need or reason for the Tribunal to review the evidence already analysed by the investigators and to rule on the existence of the harassment allegedly suffered by the appellant.

III. THE TRIBUNAL'S ASSESSMENT

1. *Principle of independence*

52. The Tribunal notes that the first ground of appeal raises an issue as to the interpretation of the legal texts applicable to the present case. In particular, the legal provisions in question fall within the scope of the Rule on investigations and concern the relationship between the powers and responsibilities of the various Council of Europe authorities involved in investigations.

53. The Tribunal begins by noting that the Rule on investigations covers different investigation processes, depending on whether they concern wrongdoing within the scope of the Council of Europe's Speak Up Policy, or the Policy on Respect and Dignity in the Council of Europe, or any other legal instrument applicable in the Organisation (see paragraph 9 of the Rule). Depending on the nature of the acts in question, different authorities within the Organisation may be competent to intervene and initiate the prescribed procedures. While wrongdoing covered by the Speak Up Policy falls within the purview of the Director of Internal Oversight, acts of harassment covered by the Policy on Respect and Dignity in the Council of Europe are a matter for the Director of Human Resources (see in particular paragraphs 7.4.1, 7.4.5, 7.4.6 and 7.4.7 of the said Policy).

54. At the same time, the Tribunal notes that in describing the functions to be performed by the competent authority under the Rule on investigations, the drafters chose to refer to the Director of Internal Oversight rather than to the Director of Human Resources, taking care to specify, however, that "[r]eferences in this text to the functions or responsibilities of the Director of Internal Oversight may refer, *mutatis mutandis*, to functions or responsibilities of the Director of the DHR, where applicable, pursuant to the above-mentioned legal instruments" (see paragraph 9 of the Rule).

55. In this instance, the appellant does not dispute the fact, *per se*, that the Director of Human Resources ordered the investigation and entrusted it to external investigators, pursuant to paragraphs 7.4.5 and 7.4.6 of the Policy on Respect and Dignity in the Council of Europe. She accepts, therefore, that the first part of paragraph 50 of the Rule on investigations, which provides that "[t]he Director of Internal Oversight may also have recourse to external investigators (...)", did not apply in her case. The appellant does maintain, however, that the

second part of paragraph 50 of the Rule on investigations applies to her case, namely the provision whereby “[i]n the event that investigative activities are to be carried out by external investigators, the DIO shall instruct and supervise the latter and shall inform them of the Organisation’s standards for the conduct of investigations”. In the same vein, she considers that, pursuant to paragraph 21 of the Rule on investigations, read literally, the external investigators should have reported exclusively to the Director of Internal Oversight, and should not have taken instructions from any other person in this respect.

56. A legal text must be interpreted in a consistent manner, and each provision must be given an interpretation that is faithful to the broader context in which it is situated. In this instance, since the responsibility and the power to order an investigation into a complaint of harassment lie with the Director of Human Resources, and not with the Director of Internal Oversight, the power to instruct and supervise the work of the investigators must logically also be exercised by the Director of Human Resources. Accordingly, the entire investigation comes under the purview of the Director of Human Resources from start to finish.

57. For the same reasons, paragraph 21 of the Rule on investigations must be interpreted as meaning that, in an investigation into a complaint of harassment, the external investigators must report to the Director of Human Resources when it is the latter and not the Director of Internal Oversight who is responsible for the investigation.

58. It follows that in giving instructions to E. H. and supervising its work in connection with the investigation into the appellant’s complaint, the Director of Human Resources neither exceeded nor misused her powers. The first ground of appeal is therefore unfounded.

2. The right to be assisted by legal counsel

59. The second ground of appeal again raises a question as to the interpretation of the applicable legal framework. The appellant considers that she was deprived, during her interview, of the right to be assisted by a lawyer, in breach of paragraph 28 of the Rule on investigations. The Secretary General, for his part, considers that under paragraph 62 of that Rule, the appellant possessed no such right.

60. The Tribunal notes that “it is a basic rule of interpretation that words which are clear and unambiguous are to be given their ordinary and natural meaning and that words must be construed objectively in their context and in keeping with their purport and purpose” (see ATCE, Appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, Orekhova and Others v. Secretary General of the Council of Europe, [decision of 4 April 2023](#), § 58).

61. The Tribunal observes that the paragraphs in question differ in purport and purpose. Paragraph 28 of the Rule on investigations deals with the confidentiality of information obtained in the course of an investigation. It introduces an exception to the rule laid down in paragraph 27, according to which members of staff taking part in the investigation process are to refrain from disclosing information obtained in that context to unauthorised persons. In effect, paragraph 28 allows information to be shared with another member of the Secretariat, a close family member, a medical professional and/or legal counsel under certain conditions. Paragraph 28 does not, however, address the possible participation of such persons in the interview, which is dealt with in paragraph 62. The latter sets out the interview arrangements in detail. It establishes the principle that only one person at a time should be interviewed, and that if the person interviewed is a member of the Secretariat, they “may be accompanied by a

member of the Secretariat of their choice, provided that the latter is not directly concerned by the investigation and/or there is no conflict of interest”. Legal counsel, however, is not among the persons entitled to accompany the Secretariat member being interviewed under this paragraph.

62. The appellant’s argument to the contrary, based on the reference in paragraph 28 to “any person invited to an interview”, does not alter this interpretation. A reading of paragraph 28 in combination with paragraph 29 is sufficient to confirm this point. The latter specifies the circumstances in which a member of the Secretariat who has sought support and advice from a third party must disclose this fact to the investigators when interviewed. The only people whose participation in the interview is envisaged in paragraph 29, however, are members of the Secretariat, to the exclusion of close family members, medical professionals and legal counsel.

63. The Tribunal concludes that, in the absence of a rule conferring on the appellant the right to be assisted by her lawyer during the interview, the Organisation did not disregard the applicable legal framework. The Tribunal considers, moreover, that there is no general principle which gives a person heard in the context of an investigation into acts allegedly committed by another person the right to be assisted by a lawyer (General Court of the European Union, [judgment of 28 May 2020](#), Cerafogli v. European Central Bank, T-483/16 RENV, paragraph 173). The second ground of appeal is therefore unfounded.

3. *Adversarial principle*

64. As someone who had lodged a complaint of harassment, the appellant had the right to be heard. In general, that right guarantees every person the opportunity to make known effectively their point of view on the existence and relevance of the facts, the alleged circumstances and the documents which the Administration intends to use against them (see ATCE, Appeal No. 651/2020, B v. Secretary General of the Council of Europe, [decision of 13 July 2021](#), § 87). The right to be heard provides a guarantee for the person concerned, but the exercise of that right at the same time enables the administration to adopt a decision in full knowledge of the facts and to correct errors (CJEU, [judgment of 4 June 2020](#), European External Action Service v. De Loecker, C-187/19P, paragraph 69; CJEU, [judgment of 25 April 2024](#), NS v. European Parliament, C-218/23P, paragraph 49).

65. The appellant contends, firstly, that that right was infringed because she had no opportunity to acquaint herself with the content of the statements taken during the investigation of her complaint and was therefore unable to challenge or rectify them. She points out that she only learned of these statements through the investigation report. In her opinion, had she been given the opportunity to respond to the statements, errors in the report could have been avoided and the firm E. H. might have arrived at a different assessment.

66. The Tribunal considers that the right to be heard guarantees every person the opportunity to make known their views during an administrative procedure and before the adoption of any decision liable to affect their interests adversely (CJEU, [judgment of 4 April 2019](#), OZ v. European Investment Bank, C-558/17P, paragraph 53; CJEU, [judgment of 4 June 2020](#), European External Action Service v. De Loecker, C-187/19P, paragraph 68; CJUE, [judgment of 25 June 2020](#), HF v. European Parliament, C-570/18P, paragraph 58; CJEU, [judgment of 30 November 2023](#), MG v. European Investment Bank, C-173/22P, paragraph 24). In the case in point, that means the right to be heard had to be guaranteed in proceedings before the Director of Human Resources, and, at the latest, before she took a decision in the context of the

management review. The appellant was in fact informed about the summary of statements, through the investigation report, at the time of the management review, and she had the opportunity to make her point of view known to the Director of Human Resources.

67. There is, however, no need to guarantee the complainant the right to be heard, in the sense referred to above, in proceedings before the body responsible for investigating allegations of harassment. At that stage, the complainant's role consists essentially in helping to establish the facts, through their statements and any other evidence that they may furnish (see General Court of the European Union, [judgment of 13 December 2018](#), CN v. European Parliament, T-76/18, paragraph 54, and [judgment of 13 December 2018](#), CH v. European Parliament, T-83/18, paragraph 71; General Court of the European Union, [judgment of 14 July 2021](#), AI v. European Centre for Disease Prevention and Control, T-65/19, paragraph 124). The Tribunal considers that, in this case, by questioning the appellant and affording her the opportunity to present her version of events, the investigators respected her right to be heard.

68. As noted above by the Tribunal, when considering the request for the production of certain documents (paragraph 33), the appellant claims, secondly, that the summaries of the witness statements in the investigation report sent to her were not sufficient to enable her to defend herself on the merits.

69. As explained above (paragraph 32), the Director of Human Resources was entitled to provide the appellant with summaries only to protect the confidentiality of the persons who gave evidence to the investigators. Yet the appellant also had to be sufficiently informed of the content of the witness statements taken during the investigation, in order to be able to challenge or rectify them if necessary (ILOAT, [Judgment No. 3732 of 8 February 2017](#), G. (No. 2) v. UPU, consideration 6; ILOAT, [Judgment No. 4108 of 6 February 2019](#), B. (No. 2) v. ILO, consideration 4; ILOAT, [Judgment No. 4781 of 31 January 2024](#), X v. ITU, consideration 9; see also, on the rights of persons accused of harassment, ATCE, Appeal No. 651/2020, B v. Secretary General of the Council of Europe, [decision of 13 July 2021](#), § 121).

70. The Tribunal considers that, in this instance, the summaries contained in the investigation report are sufficiently detailed for the purpose of complying with the adversarial principle. The appellant was informed of the substance of the witness statements, which contain specific information, in particular as to the context in which the events took place. In any event, this information enabled her to effectively put forward her observations. She also availed herself of her right to challenge and rectify the statements, as is apparent from her submissions before the Tribunal, in which she argues that the investigation report contains errors, inaccuracies and inconsistencies.

71. The adversarial principle having been observed, the third ground of appeal is unfounded.

4. *Effectiveness of the investigation*

a) *Preliminary considerations*

72. The Tribunal considers that, in her fourth ground of appeal, the appellant is essentially challenging the effectiveness of the investigation. Before addressing the various complaints, the Tribunal considers it useful to note certain principles relating to investigations into complaints of harassment.

73. When an investigation into a complaint of harassment is ordered, it is conducted by investigators external to the Organisation who have “relevant experience and expertise” (paragraph 7.4.6 of the Policy on Respect and Dignity in the Council of Europe). The practice of outsourcing such investigations was introduced by the Administration as part of the 2023 administrative reform. The Tribunal considers that this is a welcome development, as it makes for a more professional approach in this area and will minimise the risks of conflicts of interest.

74. The Tribunal points out that the Rule on investigations is the reference standard for handling complaints, including harassment complaints. This instrument “regulates how reports of wrongdoing will be dealt with” and “sets out the basic procedural steps in the investigative process, as well as the main rights and obligations of those involved in the process, and the follow-up to be given to the process” (paragraph 2). According to paragraph 3, the aim of the investigative process is to examine and determine the veracity of allegations or other indications of wrongdoing, including wrongdoing committed by Secretariat members, which, if established, could be regarded as misconduct. Paragraph 5 stipulates that this process must be carried out “in a consistent and coherent way” and “in an objective and impartial manner”, in accordance with applicable international investigative standards. With specific regard to investigations into allegations of harassment, paragraph 7.4.6 of the Policy on Respect and Dignity in the Council of Europe reiterates in particular that the investigation must be “impartial” and “thorough”.

75. Paragraph 7.4.7 of the Policy on Respect and Dignity in the Council of Europe provides that once the investigation following a complaint of harassment is complete, the investigation report is to be transmitted to the Director of Human Resources. It is then for this authority to decide what action to take on the report. “If the investigation report does not disclose any disrespectful behaviour”, the Director will decide “not to pursue the matter further”; “if, on the other hand, the investigation report discloses behaviour in violation of [the said] policy”, the Director will transmit the report, together with the accused person’s comments, to the Secretary General, who will then proceed “in accordance with Article 12 of the Staff Regulations and the implementing Staff Rules”.

76. The Tribunal considers that the Director of Human Resources has a degree of discretion to deduce from the report either that there was no disrespectful behaviour or that the report discloses behaviour that is contrary to the Policy on Respect and Dignity. To hold otherwise would mean that the Organisation would be delegating some of its responsibilities to an external body not subject to its authority, which would contravene the whole idea of creating an international organisation.

77. It follows from the foregoing that the role of the external investigator is to enable the Organisation, starting with the Director of Human Resources, to take a decision in full knowledge of the facts. In order to provide the Director with as comprehensive a case file as possible, “those conducting the investigation will endeavour to obtain, review and record any evidence that may appear relevant to an investigation” (paragraph 54 of the Rule on investigations). They are to verify and corroborate the veracity of the information obtained “such that it can withstand further scrutiny” (*ibid.*). In their conclusions, they must indicate whether or not, in their opinion, there has been any wrongdoing (paragraph 76 of the same Rule), i.e. behaviour contrary to the Policy on Respect and Dignity.

b) The various complaints regarding the effectiveness of the investigation

i. Experience and expertise of the firm E. H.

78. Insofar as the appellant questions the competence of E. H., the Tribunal notes that the firm was selected as a result of an invitation to tender procedure during which its experience and expertise were closely examined by the competent authorities, in accordance with the applicable rules. It is not for the Tribunal to substitute its assessment of the choice of service provider for that of the Organisation, which has put in place a legal framework designed to ensure that the service providers selected offer all the requisite guarantees in terms of knowledge, competence and integrity. The Tribunal does, however, have the power to ascertain whether E. H. carried out its mandate in accordance with the rules (see [ILOAT, Judgment No. 4996 of 6 February 2025](#), P. (No. 3) v. OEB, consideration 10).

79. The mere fact that the appellant had dealings with a person who introduced themselves as a “consultant” does not detract from the fact that that person was part of the firm E. H. and, in that capacity, acted as an external investigator.

ii. E. H.’s mandate and the limits thereof

80. Insofar as the appellant maintains that E. H. acknowledged its lack of competence in the preamble to the report, the Tribunal considers that the preamble correctly defined the scope of E. H.’s mandate, stating that the investigation concerned “a report (...) of inappropriate behaviour” on the part of the appellant’s managers. Borrowing the terminology used in the Rule on investigations, E. H. legitimately set itself the task of verifying the veracity of the appellant’s allegations of harassment.

81. It should also be noted that the preamble to the report rightly notes the limits of the investigators’ mandate: their report is intended to “assist the employer”, i.e. the Organisation, in deciding what action to take in response to the allegations of harassment (see paragraph 77 above). Equally rightly, the report points out that, in the event of a dispute, it is ultimately for the judge – in this case, the present Tribunal, within the limits of its powers of review - to examine the employer’s legal characterisation of the conduct complained of.

82. As to the appellant’s argument that E. H. failed to provide a legal characterisation of the conduct complained of, the Tribunal notes that, under paragraph 76 of the Rule on investigations, the investigation report must include an analysis of the evidence and fact-based conclusions as to the existence or otherwise of harassment, as defined in the Organisation’s internal rules. As will be explained below (paragraphs 92 to 100), the report does conclude, albeit implicitly, that the evidence in the investigators’ possession does not support a finding of harassment.

83. As to the reference to France’s Labour Code in the preamble to the investigation report, it is true that the investigators wrongly referred to “the legal definitions set out in the Labour Code”. They do not appear to have actually applied French laws in the course of the investigation, however. On the contrary, the report makes several pertinent references to the Organisation’s internal legal framework, in particular the guide on probationary periods.

iii. *The methodology adopted by E. H.*

84. Insofar as the appellant complains that the firm E. H. failed to include in its investigation report “a clear and exhaustive list of the evidence examined”, it is sufficient to note that the mere fact that no such list was provided does not prove that the investigation lacked rigour. Nor does the absence of such a list contravene the principle of transparency.

iv. *Failure to interview R.M.*

85. As regards the failure to interview R.M., the Tribunal notes that this was the human resources officer in charge of welfare and performance issues, who was present at the interview on 29 January 2024, during which the appellant’s line manager allegedly made upsetting remarks. The report shows that the investigators had indeed planned to interview R.M. about this, but that she was unavailable, being absent on sick leave. The appellant complains that the investigators did not make reasonable efforts to obtain this witness statement.

86. The Tribunal notes that pursuant to paragraph 54 of the Rule on investigations, “[t]hose conducting the investigation will endeavour to obtain, review, and record any evidence that may appear relevant to an investigation” and that they must make “every reasonable effort to verify and corroborate the veracity of the information obtained, such that it can withstand further scrutiny and meet the threshold of the Organisation’s standards of proof” (see paragraph 77 above). Paragraph 67 of the same Rule provides for measures to be taken in cases where a person summoned to an interview is absent, including notably by reason of illness.

87. In this instance, none of the measures provided for in paragraph 67 of the Rule on investigations was implemented to make up for the fact that R.M. was unavailable, leading the investigators to write that they were unable to draw any conclusion regarding the appellant’s complaints about the conversation in question. The Tribunal can but note that this is an omission.

88. In the circumstances, however, it cannot be regarded as having adversely affected the appellant’s rights. Firstly, the case file contains an e-mail from R.M. dated 29 January 2024 describing the interview held earlier that day as “entirely courteous”, while acknowledging that it must have been upsetting for the appellant. Secondly, the investigators themselves noted that the comments made by the appellant’s line manager may have been “very upsetting given the harshness of the terms used”. However, that did not prevent them from concluding that, in the light of the evidence in their possession, it had not been established that the appellant’s line manager deliberately refused to help her.

v. *Choice of witnesses heard*

89. As to the appellant’s argument that the investigation was biased because of the choice of witnesses, the investigation report does not disclose the job titles of the two witnesses interviewed by the investigators. Even assuming that they were persons who exercised “decision-making power when the appellant was being recruited and assessed”, as the appellant claims, their direct knowledge of the events in question was such as to warrant their being interviewed. The mere fact that they allegedly endorsed the views expressed by the appellant’s line manager is not, in the absence of concrete evidence of bias, sufficient to cast doubt on their reliability. In this regard, the appellant has provided no tangible evidence from which it could

be concluded that the individuals in question were personally prejudiced or had preconceived ideas.

90. In any event, the investigation report presents a series of witness statements which are not uniformly favourable to the appellant's managers. On the contrary, they reflect the complexity of the professional relations at issue and point to some areas of tension that might have contributed to the difficulties encountered by the appellant.

c) Conclusion

91. In the light of the foregoing, the fourth ground of appeal cannot be upheld.

5. Characterisation of harassment

a) Conclusions in the investigation report as to whether or not there was harassment

92. With regard to the appellant's argument that, by relying on an allegedly incomplete investigation report, the contested decision is vitiated by a "failure to give sufficient reasons", the Tribunal notes that, pursuant to paragraph 76 of the Rule on investigations, the investigation report must contain an analysis of the evidence and fact-based conclusions as to the existence or otherwise of harassment as defined in the Organisation's internal rules (see paragraph 82 above).

93. It is clear from the report that all the complaints raised by the appellant were examined individually. For each of them, the investigators either found that there was no evidence or adopted an alternative interpretation, failing to echo the legal assessment proposed by the appellant.

94. Accordingly, with regard to the use of the English language, the report offers a different reading of events from the one offered by the appellant. The investigators consider that there is nothing in the evidence in their possession to suggest "an insistent or threatening attitude [on the part of N+1] regarding the use of English". They explain this conclusion, pointing out that it transpires from various statements that the appellant "was firmly against using the English language, to the detriment of the interests of the service". The fact that they also mention "the lack of clarity as to the possibility for lawyers to choose their working language" does not detract from this. The investigators point out that "in any event", "the appellant's lack of flexibility [...] could have been construed by her manager as defiance".

95. With regard to the alleged lack of support during the first reference period, the investigators note that the appellant's N+1 was absent for more than a month and that there were some delays in correcting the appellant's work. While they accept that these circumstances "left the appellant feeling isolated", their conclusion is that it does not appear from the evidence in their possession "that [the N+1] failed to provide support [to the appellant]".

96. As regards the alleged delay in setting objectives for the first and second reference periods, the investigators note there was "a slight delay in setting [the appellant's] objectives for the first reference period and a significant gap between the start of the second reference period and the objective-setting [for that period]". They consider that these delays "exacerbated [the appellant's] feeling that she was not getting support and encouragement". They do not

conclude from this, however, that there was harassment, pointing out in particular that there was no specific deadline for setting the objectives for the second period and that there were no significant differences between the objectives set for the first period and those set for the second period.

97. As to the complaint that the negative assessment of the appellant's performance was unjustified, the investigators examine in turn the negative comments about her knowledge of domestic law and about her lack of proficiency in the English language. On the first point, they conclude that "the reservations regarding [the appellant's] professional skills are shared by her line managers and would seem to be borne out by a number of concrete examples". As for the second point, they note "that [the subject of bilingualism] brought various tensions to a head". They are of the opinion that "the zero score given for [the appellant's] ability to express herself in English is disproportionate" and that "the zero score given for speaking skills is not accurate". They do not conclude that this negative assessment amounts to harassment, however. On both of these points, therefore, the investigators reject the appellant's interpretation.

98. Lastly, as to the allegedly inappropriate comments made by N+1 during the assessment interview on 29 January 2024, the investigators consider that, as they did not have the opportunity to hear from R.M., who was also present at that interview, they were unable to "draw any conclusions" about the appellant's complaints. They do, however, concede that the comments made by the appellant's N+1, for example in her written assessment of the second reference period, may have been "very upsetting given the harshness of the terms used". Once again, the investigators do not conclude that such comments amount to harassment.

99. In the light of the foregoing, no blame can be attached to the investigators for having refrained from providing a legal characterisation of the alleged conduct in accordance with the applicable standards. Having refuted in detail the appellant's description of the conduct complained of, insofar as that conduct has been established, their report implicitly, but unambiguously, rules out the possibility that it could be considered to constitute harassment.

100. Insofar as the Director of Human Resources relied on the investigation report in deciding to take no further action on the harassment complaint, her decision was based on existing and verifiable grounds.

b) Conclusions drawn from the investigation report by the Director of Human Resources – alleged manifest error of assessment

101. To support her complaint that the Organisation's decision was vitiated by a manifest error of assessment, the appellant relies on a number of facts. In her view, contrary to the conclusions contained in the investigation report, those facts should have led the Director of Human Resources to conclude that there was indeed harassment on the part of the appellant's line manager, and, for that matter, institutional harassment, due to the failure of certain individuals to provide her with the support she needed and the fact that other individuals colluded with the line manager.

102. The Tribunal wishes to stress that decisions to dismiss a complaint of harassment taken at the end of an investigation may be censured by it only where there has been a manifest error of assessment (ATCE, Appeal No. 651/2020, B v. Secretary General of the Council of Europe, [decision of 13 July 2021](#), § 164). In effect, "it is not its role to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and

hearing many of the persons involved, and of assessing the reliability of what they have said” (ILOAT, [Judgment No. 4884 of 8 July 2024](#), M. (No. 2) v. UNESCO, consideration 5; in a similar context: ILOAT [Judgment No. 4996 of 6 February 2025](#), P. (No. 3) v. EPO, consideration 10).

103. The Tribunal goes on to note that, according to paragraph 4.6 of the Policy on Respect and Dignity in the Council of Europe, harassment is, *inter alia*, conduct or behaviour which is “repeated, sustained or systematic” and which “is prejudicial to the dignity, integrity, well-being or job security of the person to whom it is directed, and/or creates a humiliating, intimidating or hostile work environment”. In accordance with paragraph 4.4 of the Policy on Respect and Dignity in the Council of Europe, however, legitimate application of the Organisation’s policies, fair and reasonable management practices or justified and constructive criticism do not amount to disrespectful behaviour. It is clear from the relevant case law (in particular ATCE, Appeal No. 673/2021, C v. Governor of the Council of Europe Development Bank, [decision of 27 January 2022](#), § 90; General Court of the European Union, [judgment of 19 June 2024](#), P. V. v. European Commission, T-89/20, paragraphs 324-325; General Court of the European Union, [judgment of 9 April 2025](#), HF v. European Parliament, T-565/22, paragraphs 186 and 195), that professional disagreements, conflictual relations or unfavourable assessments of performance are not in themselves sufficient hallmarks of harassment, in the absence of a pattern of abusive behaviour that is repeated, sustained or systematic.

104. The Tribunal notes that, in formulating her complaints, the appellant relies essentially on facts that have already been examined in Appeal No. 761/2024, L.D. (I), which gave rise to this Tribunal’s [judgment of 25 March 2025](#). In that judgment, the Tribunal expressly rejected the allegations of bias against the appellant’s managers (see §§ 105 to 112 of the judgment), management failures during the probationary period (see §§ 113 to 120 of the judgment) and lack of respect for the appellant’s dignity (see §§ 125 to 127 of the judgment). In the absence of new information, there is no need to return to these complaints here.

105. Otherwise, the investigation report rules out any possibility of the conduct being considered harassment, either individual or institutional, after examining the allegations made against the management (see paragraphs 93 to 99). The conduct complained of essentially reflects differences of opinion regarding the appellant’s professional skills and the quality of her work. While these events may have been upsetting on a personal level, in the absence of intent to harm or proven ongoing behaviour, they do not amount to a violation of dignity that could be characterised as harassment within the meaning of the applicable texts.

106. The Tribunal also wishes to point out that the investigation report finds “evidence of a distinct lack of communication” on both sides (the appellant and her line manager). As far as the appellant is concerned, the report refers in particular to a “lack of flexibility”, which “could have been construed by her manager as defiance”. The appellant’s conduct was a legitimate consideration for the investigators in seeking to understand the context of the acts of which her line manager stands accused and the nature of the relationship between the appellant and the latter (see General Court of the European Union, [judgment of 9 April 2025](#), HF v. European Parliament, T-565/22, paragraph 198).

107. Lastly, as regards the appellant’s argument concerning the inaccuracies contained in the investigation report, the Tribunal notes that these are matters of detail, having to do, for example, with imprecise dates or the choice of certain terms. Although flawed, these aspects

are not such as to affect the validity of the investigation as a whole or the conclusion that was reached by the Director of Human Resources.

108. In conclusion, having regard to the evidence presented by the investigators, the Director of Human Resources was justified in concluding that there was no “proven harassment” and accordingly deciding that there were no grounds for taking further action on the appellant’s complaint.

109. It follows that the fifth ground of appeal is unfounded.

IV. CONCLUSION

110. In the light of the foregoing, the appeal seeking to have the impugned decision set aside must be dismissed. Consequently, the claim for compensation, based entirely on the alleged unlawfulness of the decision in question, must also be dismissed.

For these reasons, the Administrative Tribunal:

Dismisses the request to order the production of certain documents;

Declares the appeal unfounded;

Dismisses the claim for compensation;

Orders each party to bear its own costs.

Delivered by the Tribunal on 24 June 2025, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

Christina Olsen

Paul Lemmens