CONSEIL DE L'EUROPE————

————COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 666 and 667/2020
(Vincente DALVY and Maria OCHOA-LLIDO v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Lenia SAMUEL,
Mr Christos VASSILOPOULOS, Judges,

assisted by:

Ms Christina OLSEN, Registrar,
Mr Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant in Appeal No. 666, Ms Vincente DALVY, lodged her appeal on 16 June 2020. It was registered the same day under No. 666/2020.

2. The appellant in Appeal No 667, Ms Maria OCHOA DE MICHELENA (name used at the Council of Europe: OCHOA-LLIDO), lodged her appeal on 26 June 2020. It was registered the same day under No. 667/2020.

3. On 26 October 2020, the Secretary General submitted her observations on the two appeals.

4. On 7 December 2020, the appellants each filed a memorial in reply.

5. The hearing on these appeals was held by videoconference on 22 March 2021. The appellants were represented by Me Carine Cohen Solal, a barrister practising in Strasbourg, while the Secretary General was represented by Ms Sania Ivedi, an administrative officer in the Legal Advice and Litigation Department, assisted by Ms Ine De Coninck, from the same department.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The appellant in Appeal No. 666/2020 is a permanent staff member of the Council of Europe. She currently holds a B4 administrative assistant's post in the Registry of the European Court of Human Rights.

7. The appellant in Appeal No. 667/2020 is a permanent Council of Europe staff member. She currently holds an A5 post in the Directorate of External Relations.

8. On 15 January 2018, the appellants, along with two other Council of Europe staff members, submitted a memorandum to the Committee for Health and Safety ("CHS") alleging that a colleague's methods of working and handling interpersonal relations had been injurious to their health and dignity. At the material time, from 2007 to 2009 in the case of Appeal No. 666/2020 and from 2011 to 2013 in the case of Appeal No. 667/2020, the person complained of was the line manager of the appellant in Appeal No. 666/2020, and the immediate subordinate of the appellant in Appeal No. 667/2020.

9. As the CHS is not competent to deal with complaints relating to the individual behaviour of staff members, the appellants and the two other staff members were informed by the Director of Human Resources that they could either file a complaint with the Commission against Harassment or bring their grievances to the attention of the Administration, which would decide on the appropriate response to their allegations.

10. The complainants having opted for this last course, on 30 May 2018 the then Secretary General instructed the Director of Internal Oversight ("DIO") to conduct an internal investigation into the allegations made by the appellants and the other complainants.

11. Based on the findings of the investigation report, disciplinary proceedings were instituted against the individual in question and the matter was referred to the Disciplinary Board on 11 July 2019.

12. Earlier, on 11 April 2019, the appellants were informed that the person referred to in their complaints had lodged a complaint with the Commission against Harassment, accusing them and the other complainants of psychological harassment.

13. On 4 June 2019 and 19 June 2019, the appellants in Appeals Nos. 666/2020 and 667/2020 lodged complaints of their own with the Commission against Harassment against the individual in question.

14. In its opinion and recommendations of 17 October 2019, the Commission against Harassment acknowledged that the appellants had been subjected to psychological harassment by the person complained of.

15. The opinion and recommendations of the Commission against Harassment were also submitted to the Disciplinary Board. On the basis of the opinion of the Disciplinary Board, delivered on 2 December 2019, the Secretary General took the decision, on 17 December 2019, to impose a disciplinary measure on the person in question.

16. On 29 January and 5 February 2020 respectively, the appellants in Appeals Nos. 667/2020 and 666/2020 submitted administrative requests claiming compensation for the damage suffered as a result of the harassment to which they had been subjected, and the Organisation's failure to provide them with effective protection.

17. In their administrative requests, this damage was assessed at EUR 163 500 by the first appellant (Appeal No. 666/2020) and at EUR 100 000 by the second appellant (Appeal No. 667/2020)

18. In addition to these amounts, the appellants claimed EUR 3 000 each to cover the costs incurred in obtaining the assistance and advice of a lawyer.

19. In decisions dated 31 March 2020, the Secretary General held that the Organisation had not failed in its obligation to provide the appellants with effective protection, since "acting within its own legal framework and in accordance with its duty of good faith and care", the Organisation had "taken the appropriate action" in response to the appellants' complaints when they were formally brought to its attention.

20. In the light of the findings of the Commission against Harassment and the Disciplinary Board, the Secretary General nevertheless partially granted the appellants' requests, by awarding them compensation for non-pecuniary damage in the amount of EUR 10 000 in the case of the appellant in Appeal No. 666/2020 and EUR 5 000 in the case of the appellant in Appeal No. 667/2020.

21. The Secretary General did, however, dismiss the appellants' claims for reimbursement of costs on the ground that the latter had not been substantiated.

22. In their administrative complaints dated 20 and 28 April 2020, the appellant in Appeal No. 666/2020 and the appellant in Appeal No. 667/2020 contested the amounts that they had been awarded, alleging that they were not sufficient and insisting that the Organisation was liable on account of its failure to provide adequate protection and its inaction.

23. In their respective administrative complaints, the first appellant (Appeal No. 666/2020) sought EUR 185 763 in compensation (EUR 100 000 for non-pecuniary damage, EUR 19 263 in damages amounting to six months' salary, EUR 63 500 for pecuniary damage and EUR 3 000 in costs), while the second appellant (Appeal No 667/2020) sought EUR 211 132 in compensation (EUR 100 000 for professional and non-pecuniary damage, EUR 108 132 in damages amounting to 6 months' salary, and EUR 3 000 in costs).

24. In replies dated 20 and 28 May 2020, the Secretary General dismissed the administrative complaint lodged by the appellant in Appeal No. 666/2020 and the administrative complaint lodged by the appellant in Appeal No. 667/2020 as unfounded.

25. In her reply to the administrative complaint lodged by the first appellant (Appeal No. 666/2020), the Secretary General stated:

> "As regards your claim for compensation, it should be reiterated that the Organisation cannot be held liable in this instance and cannot therefore be required to make good the alleged damage.
>
> However, mindful of her commitment to combating harassment and in the light of the findings of the Commission against Harassment and the Disciplinary Board, the Secretary General felt that you should be awarded compensation in the amount of EUR 10 000 for the non-pecuniary damage suffered. As has already been pointed out in the reply to your administrative request, there is no justification for the very large amount of compensation that you are claiming under this head, and you have not provided any evidence in support of your administrative complaint that would warrant a different conclusion. In the circumstances, the Secretary General considers that the sum of EUR 10 000 constitutes sufficient compensation.
>
> With regard to the breach of the Organisation's obligation to achieve results, it should be pointed out that the Organisation has not committed any fault that would give rise to compensation under this head. Consequently, the Secretary General cannot accept your claim – which, it should be noted, was not part of your administrative request - for EUR 19 263 under this head.
>
> As regards the loss of earnings between 12 March 2009 and 31 December 2009 and the loss of the corresponding pension rights for which you are seeking compensation, it should be pointed out that you decided, of your own accord, to take leave without pay. The causal link between the harassment you suffered and your application for unpaid leave has not been established, moreover. It should be noted here that you justified your request to take leave for personal reasons on the ground that you wished to undertake "study or research work of value for the staff member's training and/or the Council" and you did in fact train as a graphic designer during this period. You are now reaping the benefits of that training as it enabled you to acquire new skills essential for the post to which you were recently promoted. Your professional advancement in this respect (promotion from grade B3 to grade B4) has also benefited you financially. The Secretary General therefore dismisses this part of your request as well."

26. The Secretary General replied in similar terms to the administrative complaint lodged by the second appellant (Appeal No. 667/2020):

> "As regards your claim for compensation, it should be reiterated that the Organisation cannot be held liable in this instance and cannot therefore be required to make good the alleged damage.

> However, mindful of her commitment to combating harassment and in the light of the findings of the Commission against Harassment, the Secretary General felt that you should be awarded compensation in the amount of EUR 5 000 for the non-pecuniary damage suffered. As has already been pointed out in the reply to your administrative request, there is no justification for the excessively large amount of compensation that you are claiming under this head, and you have not provided any evidence in support of your administrative complaint that would warrant a different conclusion. Taking into account the circumstances of the case and the considerations noted above, the Secretary General considers that the sum of EUR 5 000 constitutes sufficient compensation.
>
> With regard to the breach of the Organisation's obligation to achieve results, it should be pointed out that the Organisation has not committed any fault that would give rise to compensation under this head. Consequently, the Secretary General cannot accept your claim – which, it should be noted, was not part of your administrative request – for EUR 108 132 under this head."

27. On 16 and 26 June 2020 respectively, the appellants lodged Appeals Nos. 666/2020 and 667/2020 with the Tribunal against the above-mentioned decisions by the Secretary General, dismissing their requests (see paragraphs 25 and 26).

II. RELEVANT LAW

28. Administrative complaints are governed by Article 59 of the Staff Regulations. The relevant provisions of this article read as follows:

> "2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.
>
> 3. The complaint must be made in writing and lodged via the Director of Human Resources:
> […]
> b. within thirty days of the date of notification of the act to the person concerned, in the case of an individual measure; (…)"

29. Article 60 of the Staff Regulations concerns the lodging of appeals. The relevant paragraphs read as follows:

> "1. In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers.
>
> 2. The Administrative Tribunal, after establishing the facts, shall decide as to the law. In disputes of a pecuniary nature, it shall have unlimited jurisdiction. In other disputes, it may annul the act complained of. It may also order the Council to pay to the appellant compensation for damage resulting from the act complained of.
>
> 3. An appeal shall be lodged in writing within sixty days from the date of notification of the Secretary General's decision on the complaint or from the expiry of the time-limit referred to in Article 59, paragraph 4. Nevertheless, in exceptional cases and for duly justified reasons, the Administrative Tribunal may declare admissible an appeal lodged after the expiry of these periods."

30. Prior to the entry into force of Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe, harassment at the Council was prohibited under

Article 2, paragraph 1, of Instruction No. 44 of 7 March 2002 on the same subject, which reads:

> "Everyone working at the Council of Europe, regardless of status or employment contract, has the right to effective protection against sexual and psychological harassment, irrespective of the person perpetrating such conduct."

31. Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe now states, in Article 2, paragraph 1, that:

> "Everyone working at the Council of Europe, regardless of status or employment contract, has the right to effective protection by application of the provisions of this Rule against sexual and psychological harassment, irrespective of the person perpetrating such conduct".

32. The Policy Statement on Harassment adopted on 28 September 2010 by the then-Secretary General and Deputy Secretary General provides that:

> "Rule No. 1292 on the protection of human dignity constitutes the basis of the policy for eliminating sexual and psychological harassment at the Council of Europe.
>
> Harassment in any form is unacceptable. It will be neither tolerated nor excused and is liable to be sanctioned. All staff, whether in a position of managerial responsibility or not, have a personal responsibility to ensure that the human dignity of their colleagues is respected. Anyone who believes that they are a victim of harassment is entitled to be listened to, supported and assisted in the strictest confidence, whichever of the procedures described in Rule No. 1292 they choose to follow and without fear of reprisal.
>
> We, Secretary General and Deputy Secretary General, commit ourselves to guaranteeing a working environment free of sexual and psychological harassment and to establishing a culture of mutual respect in accordance with Article 4 of the Charter on Professional Ethics. Accordingly, we undertake to:
>
> • take appropriate measures against proven harassers, including disciplinary measures under Article 54 of the Staff Regulations;
> • afford effective protection to staff who believe themselves to be victims of harassment and to persons who may be involved as witnesses;
> • publish an annual summary of the actions which have been taken in harassment cases (while respecting the principle of confidentiality).
>
> We also instruct the Directorate of Human Resources to:
>
> • regularly inform staff of the procedures in place, raise their awareness of the need to respect human dignity, and to encourage them to participate in training for the prevention of conflicts and of harassment;
> • strongly encourage all appraisers to follow harassment prevention training.
>
> We believe that hierarchical superiors have a crucial role to play in the implementation of the harassment prevention policy, this is the reason why we call on managers at all levels to:
>
> • set an example through their personal conduct, and create and maintain a work atmosphere founded on respect;
> • refuse to tolerate intimidation or disrespectful behaviour within their teams;
> • take early action to resolve conflicts."

33. With regard to interpersonal relations and the working environment at the Council of Europe, Article 4 of the Charter of Professional Ethics of 15 July 2005 reads as follows:

> "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."

THE LAW

I. JOINDER OF APPEALS

34. Given the connection between the two appeals, the Administrative Tribunal orders their joinder pursuant to Rule 14 of its Rules of Procedure.

II. EXAMINATION OF THE APPEALS

35. The appellants ask the Tribunal to find that the Organisation failed in its duty to protect them and to achieve results in relation to the psychological harassment they suffered. They accordingly ask the Tribunal to set aside the Secretary General's decision of 31 March 2020 partially granting their request by limiting the compensation awarded for non-pecuniary damage and refusing to compensate the appellants for damage other than non-pecuniary damage, without holding the Organisation liable.

36. The appellant in Appeal No. 666/2020 seeks damages in the amount of EUR 172 763, broken down as follows: EUR 100 000 for non-pecuniary damage, EUR 19 263 for the Organisation's breach of its duty to protect and to achieve results and EUR 53 500 for pecuniary damage.

37. The appellant in Appeal No. 667/2020 seeks damages in the amount of EUR 208 132, broken down as follows: EUR 100 000 for non-pecuniary damage and EUR 108 132 for the Organisation's breach of its duty to protect and to achieve results.

38. Lastly, the appellants are each seeking reimbursement of the costs of the proceedings, which they estimate at EUR 5 000.

39. The Secretary General does not dispute that the appellants suffered harassment, the material facts of which were established by the Commission against Harassment upon investigating the matter. The Secretary General does, however, deny that the Organisation is liable and that consequently the appellants are entitled to be awarded the sums claimed in damages. The Secretary General accordingly invites the Tribunal to dismiss the appellants' claims for compensation and reimbursement and to find that the compensation awarded to them for non-pecuniary damage is sufficient in the specific circumstances of the case.

III. SUBMISSIONS OF THE PARTIES

A. The appellants

40. Firstly, the appellants refer to the psychological harassment which they suffered. They point out that the reality of the harassment was acknowledged by the Commission against Harassment, the Disciplinary Board and the Secretary General, and that there is no need, therefore, to provide evidence of such harassment in the present proceedings.

41. The appellants then refer to the steps which they took at the time of the events, before lodging a formal complaint, to alert *inter alia* their superiors, the Mediator, the Council's medical officer and the Directorate of Human Resources ("DHR") to the situation, and in response to which Organisation failed to provide them with the support, assistance and protection they required.

42. In support of this assertion, the appellants cite the findings of the Commission against Harassment, in particular in paragraphs 73, 102 and 103 of its opinion dated 17 October 2019:

> "73. The commission received documents showing that Ms Dalvy had seen a doctor and that she was under intense stress and considerable psychological strain, potentially work-related. The commission also received confirmation that the Council of Europe doctor had alerted DHR to the situation on three occasions.
>
> (...)
>
> 102. In the view of the commission, Ms Ochoa-Llido's managers did not do enough to put a stop to the rebellious behaviour and to support Ms Ochoa-Llido.
>
> 103. The commission considers that DHR did not react quickly enough to support the attempts made by [X's] managers to punish him for his unacceptable behaviour, particularly when it came to his appraisal."

42. On the basis of the facts as presented, the appellants allege, firstly, that the Organisation failed in its duty to prevent the psychological harassment to which they were subjected – before it materialised – and, secondly, that once the harassment became apparent, the Organisation failed in its duty to protect their physical and psychological health and safety. They point out that they were entitled to such protection from the moment they initiated one of the non-contentious procedures described in Rule No. 1292, irrespective of whether a formal complaint of harassment was lodged.

43. As a result of the Administration's inaction, the appellants continued to suffer harassment and intimidation in the workplace, which were injurious to their honour, dignity, image, reputation and careers.

44. The appellants submit that the compensation offered to them by the Administration is insufficient. Firstly, it is alleged that the amount is not sufficient to cover all the damage inflicted, particularly in view of the extent and duration of the psychological harassment

and its effects on their physical and psychological health. Secondly, the appellants maintain that they are entitled to compensation because the Organisation failed in its duty to protect them.

45. The appellant in Appeal No. 666/2020 further alleges that she suffered pecuniary damage from having taken unpaid leave from mid-March 2009 to 31 December 2009 in order to stop the psychological harassment that she was experiencing.

46. The appellant in Appeal No. 667/2020 refers to the fact that she was transferred on returning from the leave which she was forced to take from 18 January 2016 to 1 March 2016 because of the harassment she had suffered, whereas her immediate subordinate "had no concerns about his actions, nor for that matter about his future career" (paragraph 35 of the further pleadings). In her memorial in reply to the Secretary General's observations, the appellant in Appeal No 667/2020 provides additional arguments in support of her assertion that this transfer was not imposed on her for her own good and was a contributory factor in the burnout she suffered and in her going off on sick leave from 27 February 2017 until 6 December 2018. She notes that, on returning from sick leave, she found herself without an assigned post from December 2018 until September 2020 and that, contrary to what the Secretary General claims, this was not down to her refusal to return to her previous post since she had clearly informed DHR that, in the opinion of her doctor "returning to the same post, in working conditions unsuited to her grade and skills, was bound to bring about a relapse" (paragraph 17 of the observations in reply).

47. The appellant in Appeal No. 667/2020 further notes that the Secretary General has provided no evidence that her immediate subordinate at the time of the events was made aware of the need to respect human dignity and encouraged to participate in conflict prevention and harassment prevention training, in his capacity as a manager and an appraiser. According to the appellant, it may thus be concluded that, in the case in point, the Organisation failed in its duty to prevent harassment.

48. In support of the allegation that the Organisation failed in its duty to protect her, the appellant in Appeal No. 667/2020 adds that at the time of the events, she was dissuaded from taking action against her alleged harasser by her superiors (N+1 and N+2), DHR, the then Deputy Secretary General and the Mediator. Likewise, she maintains, the decision to transfer her to the Congress of Local and Regional Authorities was made in an attempt to safeguard the interests of her harasser rather than for her own protection. According to the appellant, the disciplinary sanction imposed on her harasser (see paragraph 15 above) was insufficient to put a stop to this impunity, especially when one considers that, under French law, psychological harassment constitutes a criminal offence and can lead to dismissal for gross misconduct.

49. The appellants accordingly reiterate the submissions set out in their appeals.

B. The Secretary General

50. The Secretary General notes firstly that the appellants only made it clear that they wanted their allegations of harassment relating to the period from 2007 to 2009 in the case of Appeal No. 666/2020, and from 2011 to 2013 in the case of Appeal No. 667/2020, to be made formal in 2018, when the matter was referred to the CHS, and later in June 2019, when they lodged a complaint with the Commission against Harassment, after their alleged harasser lodged one against them. The appellants did not express any such wish at the time of the events complained of, however.

51. The Secretary General observes that, when the appellants' complaints were formally brought to the Administration's attention in 2018, the Organisation took the appropriate action and fulfilled its duty of good faith and care, acting within its own legal framework. The measures and procedures implemented, both in the internal investigation and at the level of the Commission against Harassment and the Disciplinary Board, were effective and afforded an opportunity to acknowledge and deal with the harassment suffered by the appellants, who, incidentally, have made no complaints about these procedures.

52. The Secretary General then takes issue with the appellants' claim that, at the time of the events complained of, the Organisation did not respond appropriately to the facts as brought to its attention.

53. With regard to Appeal No. 666/2020, the Secretary General observes that this complaint is unsubstantiated and that the appellant does not specify what form her "complaints and warnings" took, with the result that the Secretary General is unable to ascertain whether the various individuals to whom the matter was referred at the time, namely more than ten years ago, responded appropriately. In particular, as regards the allegedly inappropriate response from the appellant's managers, various measures were taken by the appellant's N+2 at the time of the events and at no point did the appellant seek to attach any blame to the Administration during that period. The Secretary General also notes that the appellant did not work with her harasser for very long between March 2007 and March 2009, given that she was absent for 168 days on leave and off sick for 125 days. The appellant was allowed to take unpaid leave, with the result that from mid-March 2009 to 31 December 2009 she was no longer exposed to the environment she considered to be a source of harassment.

54. As to Appeal No. 667/2020, the Secretary General considers that the various people in the Organisation to whom the matter was referred all took the appropriate action based on the information available to them. The Secretary General likewise notes that the appellant's allegations that she was discouraged at the time by DHR from taking formal action are unsubstantiated and unfair, as DHR never tries to dissuade staff who come to it for advice from lodging harassment complaints. The Secretary General also denies the appellant's claim that, in transferring her to the secretariat of the Congress of Local and Regional Authorities in March 2016, her managers were effectively "punishing her and disowning her", noting that with this transfer, not only did the appellant get to keep her A5

grade and carry out tasks and responsibilities that matched her profile but also the move gave her "an opportunity to make a fresh start after a difficult period" and was arranged with the appellant's consent. In response to the appellant's allegation that "every endeavour was made to protect [the person accused of harassment]", the Secretary General adds that the individual in question was transferred on 15 February 2016, i.e. before the appellant, who was transferred in March 2016.

55. As to the fact that the appellant in Appeal No. 667/2020 was not assigned a post for several months, the Secretary General considers that this state of affairs - which the appellant refers to for the first time in her administrative complaint – was directly and primarily due to the appellant's refusal to return to the secretariat of the Congress of Local and Regional Authorities at the end of her sick leave in late 2018. Not wishing to force the appellant to return to this post, the Administration actively sought alternative ways for the appellant to come back to work, in close consultation with the appellant herself, until its efforts were eventually rewarded and the appellant was appointed to the Directorate of External Relations on 1 September 2020. The Secretary General points out that, throughout the period when the appellant was not working, she continued to receive her full salary without interruption, and DHR was there to listen and provide support, in particular with regard to training, coaching and well-being.

56. With regard to both appeals, the Secretary General states that, in any case, the Administration had no evidence to suggest that the "complaints and warnings" issued at the time of the events pointed to the existence of a conflict at work beyond the usual kind, or that the individuals about whom the appellants were complaining should have reacted differently, based on these warnings and the information available to them at the time.

57. As regards the appellants' claims for compensation, the Secretary General refers to the relevant case law according to which the defendant organisation can only be held liable for damages if three conditions are met: the organisation's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. In the instant case, argues the Secretary General, the Organisation has not committed any irregularity that would incur its liability with regard to the appellants.

58. With regard to the appellants' claims for compensation for non-pecuniary damage, the Secretary General, while maintaining that the Organisation has not committed any fault that would require it to make good the alleged damage, considers that the sum of EUR 10 000 paid to the appellant in Appeal No. 666/2020 and the sum of EUR 5 000 paid to the appellant in Appeal No. 667/2020 are sufficient and that the appellants have not provided any evidence to justify their claims for the excessively large sum of EUR 100 000 each. The Secretary General also notes that the appellant in Appeal No. 666/2020 requested only EUR 40 000 by way of compensation for non-pecuniary damage when she lodged her complaint with the Commission against Harassment.

59. In the alternative, the Secretary General notes that the appellants' claims for six months' salary "in damages for the Organisation's breach of its duty to protect and to achieve results" were not part of their administrative requests and are in addition to the

requests already made by the appellants for non-pecuniary and material damage, when in fact there is no reason to award separate compensation here. As to the request made by the appellant in Appeal No. 666/2020 for compensation for the pecuniary damage arising from her unpaid leave, the Secretary General points out that this was leave for personal reasons, which the appellant decided to take of her own accord and from which she benefited, furthermore, using it to undergo professional training which enabled her to acquire the skills needed for the grade B4 post to which she was later promoted.

60. As regards the claims for reimbursement of the costs of the appeals, the Secretary General asks the Tribunal to reject these on the ground that the appellants have not provided any documentary or other evidence in support of their claims, contrary to Article 11 of the Statute of the Administrative Tribunal (Appendix XI to the Staff Regulations).

IV. THE TRIBUNAL'S ASSESSMENT

61. In their appeals, the appellants ask that the respective impugned decisions be set aside, seeking in their submissions firstly a finding that the Organisation was liable and, secondly, an increase in the amount awarded for the non-pecuniary damage suffered.

62. In their appeals, the appellants contend that the unlawfulness of the alleged conduct arises from the Administration's breach of its duty firstly to protect its staff from any psychological harassment, by putting a stop to such conduct as quickly as possible and by taking measures to prevent any recurrence of the harassment and, secondly, to secure for them a healthy and safe working environment, free of harassment.

63. The Tribunal considers that, as is clear from the settled case law of the international administrative tribunals, in order for an organisation to incur non-contractual liability, three conditions must be met: the organisation's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct and the damage pleaded. Since those three conditions are cumulative, failure to meet one of them is sufficient for an action for damages to be dismissed.

64. It is also widely recognised in case law that where an organisation becomes aware of harassment, it must deal with it as quickly and efficiently as possible, in order to protect staff members from unnecessary suffering (see, for example, International Labour Organisation Administrative Tribunal (ILOAT), Judgments Nos. 4243 – C.W. v. OMPI, consideration 24; 3447 – K.B. v. ILO, consideration 7; and 2642 – C.E.S. (n° 2) v. WHO, consideration 8).

A. The Organisation's liability

1. *Duty to protect*

65. The Tribunal notes firstly that, through the impugned decisions, the Secretary General denies that there was any unlawful conduct in the present case that might cause the Organisation's non-contractual liability to be incurred.

66. In both appeals, consideration should be given to the Organisation's alleged breach of its duty to protect staff members in relation to the harassment in question, on the basis of the complaints and warnings issued to the Administration.

67. With regard, firstly, to the Administration's alleged breach of its duty to provide protection before the appellants submitted a formal complaint, the factual background to each of the appeals needs to be examined.

68. In the case of Appeal No. 666/2020, it must be noted that the events recounted by the appellant as proof of the Administration's failure to act occurred several years before she lodged a formal complaint. The complaint which she made to the CHS was lodged in January 2018, yet the events which prompted this complaint occurred between May 2007 and the end of 2009 and, during that period, the appellant was off sick for 125 days and on unpaid leave from mid-March 2009 until the end of 2009.

69. The Tribunal notes that, although under the applicable Council of Europe texts there is no time limit for lodging a complaint of harassment, the gap in time between the harassment and the reporting of that harassment hampers the Organisation's ability to deal with it properly. It is worth noting here that, according to the relevant case law, "[a]lthough the Organization is obliged to investigate any incidents that might constitute harassment, the employee must nevertheless report those incidents in good time so as to allow the Organization to fulfil its duty" (see judgment 4034 of the International Labour Organisation Administrative Tribunal (ILOAT), consideration 12). Early reporting also helps to establish the facts more accurately.

70. The Tribunal observes in this connection that the appellant's allegations concerning the informal steps taken to alert the Administration to her situation and enlist its help remain, to a large extent, unsubstantiated.

71. The medical certificates in the case file do admittedly show that DHR was alerted to the appellant's distress. The Tribunal, however, does not feel able to infer from this that the Administration failed to take any measures to protect the appellant. Added to these considerations is the fact that, because she was on unpaid leave during the period to which some of these certificates refer, the appellant was away from the workplace and therefore no longer exposed to the harassment in question. Lastly, and most importantly, at the end of that period the appellant was removed from the situation complained of once and for all, as she went to work for a different Council of Europe department.

72. The Tribunal accordingly considers that the appellant in Appeal No. 666/2020 has not shown that the Administration failed in its duty to provide protection in the present instance.

73. In the case of Appeal No. 667/2020, the facts cited by the appellant as proof of the Administration's failure to act occurred between 2011 and 1 March 2016, when the appellant was transferred to the Congress of Local and Regional Authorities.

74. In its findings, the Commission against Harassment took the view that the appellant's managers had not done enough to put a stop to the rebellious behaviour and to support her. It also felt that DHR had not reacted quickly enough to support the attempts by the harasser's managers to punish him (see paragraph 42 above).

75. The Tribunal observes, however, that the appellant has not provided evidence that, at the time of the events, the steps she took vis-à-vis her managers or DHR were explicitly intended to put a stop to, or to protect her from, an alleged case of harassment.

76. The evidence adduced by the appellant relates essentially to the contentious proceedings arising from the harassment complaint which she lodged with the Commission against Harassment in 2019 (see paragraphs 13 and 14 above).

77. As to the medical report in the case file, which states that the appellant had reactive depression disorder due to the harassment she described, the Tribunal notes that this dates from December 2017. As regards the evidential value of such a document, the Tribunal notes that, in any event, the opinions of medical experts are, in themselves, not such as to establish the existence, in law, of harassment or of fault on the part of the institution in the light of its duty to provide assistance (see case law of the Court of Justice of the European Union, judgments of 6 February 2015, BQ/Cour des comptes, T 7/14 P, EU:T:2015:79, paragraph 49; of 17 September 2014, CQ/Parliament, F 12/13, EU:F:2014:214, paragraph 127, and of 6 October 2015, CH/Parliament, F 132/14, EU:F:2015:115, paragraph 92). While a medical certificate may reveal that a person has psychological problems, it cannot establish that those problems result from psychological harassment, since, to make such a finding of harassment, the author of the certificate necessarily relies exclusively on the description that the person made of his or her working conditions (in this connection, see the case law of the Court of Justice of the European Union, judgments of 2 December 2008, K/Parlement, F 15/07, EU:F:2008:158, paragraph 41, and of 17 September 2014, CQ/Parliament, F 12/13, EU:F:2014:214, paragraph 127).

78. The Tribunal also notes that, at the time of the events, the appellant did not avail herself of the possibility provided for in Article 14 of Rule No. 1292 to lodge a formal complaint about the failure to provide her with effective protection as a victim of harassment.

79. It follows from the above that the ground of appeal alleging a breach of the Administration's duty to protect is not supported by the facts and, consequently, no argument as to the unlawfulness of the alleged conduct can be sustained. The Tribunal therefore concludes that the unlawfulness of the alleged conduct has not been established in the instant case.

80. As regards, secondly, the harassment referred to in the appellants' complaints - which occurred from 2007 to 2009 in the case of Appeal No. 666/2020 and from 2011 to 2016 in the case of Appeal No. 667/2020 - the Tribunal considers that the Administration acted promptly and adopted the protective measures that were necessary in the circumstances and in accordance with the applicable rules.

81. The Tribunal considers in this respect that, from the time the appellants submitted their harassment complaints, the Organisation acted with due diligence to investigate the allegations made.

82. In effect, after the appellants' memorandum was submitted to the CHS, and based on what they decided when the Administration explained the various options open to them, an internal investigation was launched and entrusted to DIO, which submitted its report on 4 June 2019. The Tribunal also notes that the Administration showed concern for the appellants by ensuring that they were informed of the options available to them, it being observed that the appellants had initially referred the matter to a body with no competence in the matter, namely the CHS.

83. Similarly, when the appellants made a second referral, this time to the Commission against Harassment in June 2019, the Commission considered the appellants' case with due care and issued its opinion on 17 October 2019.

84. The findings of the DIO's internal investigation and the opinion and recommendations of the Commission against Harassment were submitted to the Disciplinary Board, which issued its opinion on 2 December 2019 and concluded that a disciplinary penalty should be imposed on the person responsible for the harassment.

85. It is clear from the various points brought to the Tribunal's attention that, as soon as the appellants made their harassment complaints formal, the Administration took the appropriate steps to determine the facts in a thorough and objective manner. It has also been established that, following the launch of the procedures involving the internal investigation and the examination of the complaints by the competent commission, the bodies concerned delivered their findings within a reasonable time and made recommendations concerning both the action to be taken against the harasser and improvements to the Council of Europe's harassment prevention mechanisms.

86. Given that the conditions which must be satisfied for the Organisation to incur liability, as set out in paragraph 64 above, are cumulative, the failure to meet the first condition, namely the unlawfulness of the alleged conduct, leads the Tribunal to conclude that it has not been established that the Organisation's non-contractual liability has been incurred, with no need for the Tribunal to rule on the other conditions in connection with this ground of appeal.

2. *Obligation to ensure a healthy and safe working environment, free of harassment*

87. In their appeals, the appellants submit that the Administration failed to fulfil its obligation to secure for them a healthy and safe working environment. Such failure, they maintain, constitutes a breach by the Administration that is capable of incurring the Organisation's non-contractual liability.

88. As pointed out in paragraph 31 above, Rule No. 1292 requires the Organisation to protect anyone working at the Council of Europe against psychological and sexual harassment. At the time of the events described by the appellant in Appeal No. 666/2020, which predate the adoption of Rule No. 1292, a similar provision applied under Article 2, paragraph 1, of Instruction No. 44 of 7 March 2002, which was superseded by Rule No. 1292 (see paragraph 30 above).

89. The Organisation's commitment to ensuring a healthy working environment, free of harassment and capable of protecting the dignity of staff members, is reiterated in the above-mentioned Policy Statement on Harassment (see paragraph 32), as well as in Article 4 of the Charter of Professional Ethics (see paragraph 33 above).

90. It follows from the above texts that there was an obligation on the Organisation to ensure a working environment that would protect the physical and psychological integrity of its staff.

91. The Tribunal notes in this regard that, in its opinion of 17 October 2019, the Commission against Harassment made a number of recommendations aimed at strengthening the measures in place at the Council to ensure effective implementation of the above provisions. The Tribunal refers in this connection to the findings of the opinion concerning the Administration, which read:

> "1) The Administration should better inform staff about the non-contentious and contentious procedures in place in the Council of Europe regarding complaints of harassment or other inappropriate behaviour at work, emphasising the obligation to comply with these procedures.
>
> 2) The Administration should systematically inform staff of the existence of non-contentious and contentious procedures whenever DHR receives an informal complaint;
>
> 3) The Administration should review the appraisal system to ensure closer monitoring of managers who behave inappropriately at work;
>
> 4) The Administration should give more support to managers who have to punish staff members for inappropriate behaviour (...)."

92. The Tribunal notes that in the present case, and contrary to what the appellants allege, the Administration did not act in a way that indicates failure to achieve the goal of ensuring a healthy and safe working environment free of harassment. The recommendations made highlighted weaknesses that called for improvements. Those weaknesses alone, however, cannot be regarded here as evidence that the Administration failed in its obligation to provide a healthy and safe working environment free of harassment.

93. This ground of appeal must therefore be rejected, no reasonable argument as to the unlawfulness of the alleged conduct having been adduced. The Tribunal therefore concludes that the unlawfulness of the alleged conduct has not been established in the instant case.

94. Furthermore, the Tribunal considers it worth pointing out that, with regard to this ground of appeal and in relation to the conditions mentioned in paragraph 64 above, neither the requirement for there to have been actual damage nor the requirement for a causal link between the unlawfulness complained of and the damage pleaded have been met. Both appellants merely cite the existence of damage which they have calculated on the basis of their pay, as the case may be, without proving either that actual damage occurred or the causal link between the said damage and the harassment suffered, even though they have not left the Organisation. The Tribunal notes that it is not sufficient to plead an alleged violation by the Administration in order to justify a claim for compensation for the damage suffered, and that it must also be shown that this material and/or pecuniary damage is in fact real. That is not the case here, however.

95. The appellants' submissions regarding the Organisation's liability for the breaches allegedly committed by the Administration must therefore be dismissed.

B. Non-pecuniary damage

96. In their appeals, the appellants contend that the sums awarded for non-pecuniary damage suffered as a result of the harassment, EUR 10 000 and EUR 5 000 respectively, do not reflect the reality of the non-pecuniary damage suffered, which they each assess at EUR 100 000. They therefore request that the Tribunal set aside the respective impugned decisions and increase the amount to be paid to them by way of compensation for the said damage.

97. Taking into account the particular circumstances of the case and the appellants' requests, the Tribunal considers that the Secretary General's assessment of the compensation for the non-pecuniary damage suffered by the appellants is reasonable and sufficiently substantiated in the impugned decisions. There is therefore no reason to set aside the respective impugned decisions on this ground and to grant the appellants' requests for an increase in the sums awarded under this head.

98. It follows that the appellants' claims for compensation for non-pecuniary damage must be dismissed.

99. The present appeals must therefore be rejected in their entirety.

V. COSTS

100. Under Article 11 of the Statute of the Administrative Tribunal (Appendix XI to the Staff Regulations), the only costs which the Tribunal can award are the (vouched) costs of the appeal incurred by appellants in the proceedings before the Tribunal, and only if the appeal has been allowed.

101. Nevertheless, under paragraph 3 of the aforementioned Article 11, in cases where it has rejected an appeal, the Tribunal may, if it considers there are exceptional

circumstances justifying such an order, decide that the Council shall reimburse in whole or in part properly vouched expenses incurred by the appellant, and in view of the harassment suffered by the appellants and acknowledged by the Secretary General, the Tribunal, as an exceptional measure, orders that each appellant be reimbursed in the amount of EUR 3 000.

VI. CONCLUSION

102. The Tribunal concludes that both appeals are unfounded and must be dismissed.

103. The Tribunal considers, however, that, in the particular circumstances of the instant case, and as stated in paragraph 102 above, the Secretary General must pay each appellant the sum of EUR 3 000 in costs.

For these reasons,

The Administrative Tribunal:

Orders the joinder of the appeals;

Declares Appeal No. 666/2020 unfounded and dismisses it;

Declares Appeal No. 667/2020 unfounded and dismisses it;

Orders the Secretary General to pay each appellant EUR 3 000 by way of costs and expenses.

Adopted by the Tribunal by videoconference on 15 June 2021 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 28 June 2021, the French text being authentic.

The Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
Christina OLSEN	Nina VAJIĆ