

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**C.**

**v.**

**ITER Organization**

**136th Session**

**Judgment No. 4679**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms B. C. against the International Fusion Energy Organization (ITER Organization) on 10 December 2019, the ITER Organization's reply of 30 April 2020, the complainant's rejoinder of 26 May 2020 and the ITER Organization's surrejoinder of 31 August 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant impugns the decision to reject her complaint of harassment, discrimination and abuse of authority.

The complainant joined the ITER Organization in 2009 as a Blanket Engineer Analyst, at grade P-3. She was initially granted a five-year contract which was subsequently renewed for another five years (from 2 June 2014 to 1 June 2019). As she had a partial permanent disability, a teleworking arrangement was put in place in 2015 to accommodate her medical condition and treatments. This arrangement, which permitted her to work from home two days per week, was systematically renewed for periods of six months.

During a meeting held on 2 November 2018 to discuss the renewal of the complainant's contract, the Director-General announced his intention to renew her contract of employment for two to three years, rather than five. During that meeting the Director-General also discussed with the complainant the progress of the Blanket project, on which she was working, and, by an email of that same day, he called for a meeting of the project team, including the complainant and her line managers, to discuss the key milestones of the relevant project. This meeting was held on 8 November 2018. On 22 November 2018, the complainant was informed of the Director-General's decision to renew her contract for two and a half years.

On 27 November 2018, she met with the Head of the Human Resources Department (HRD) to discuss her contract renewal and, on 12 December 2018, she wrote to him to inquire why she had not yet received his feedback on (i) her request for a written explanation why she was offered a contract renewal of only two and a half years, despite her good performance and the fact her line managers had recommended a five-year contract renewal; (ii) the possibility to further discuss with the Director-General the terms of her contract renewal and find a satisfactory compromise. The Head of HRD replied that he was unaware the complainant expected feedback, given that these matters were discussed in detail during their meeting. As to the Director-General's decision on the duration of her contract, he stated that it was based on the foreseeable needs of the project for the position to which she was assigned and her performance. He added that her line managers' recommendation was duly considered but it was not binding on the Director-General. In the event, the complainant's contract was renewed for two and a half years (from 2 June 2019 to 30 November 2021).

On 12 April 2019, the complainant wrote to the Director-General to inform him that she intended to submit a formal complaint of harassment and abuse of authority against him and the Head of HRD, based on the incidents that had occurred in the discussions preceding the renewal of her contract, and she requested that an investigation into her allegations be carried out by one or more individuals outside the ITER Organization. She based her request on the need to prevent

potential conflicts of interest for any ITER staff member involved in a future investigation, to minimise the risk for their independence to be compromised and to maintain full confidentiality regarding her health condition. The Director-General replied, by an email of 16 April 2019, that it was his responsibility to prevent any potential situation of conflict of interest and invited the complainant to write to the Deputy Director-General who would acknowledge receipt and review the complaint to assess whether it had been made in good faith and there were sufficient grounds to warrant a formal fact-finding investigation. The Director-General rejected the complainant's request that the investigation be conducted by individuals outside the organization as "not admissible" and recalled that, if the complaint was made in bad faith, a misconduct procedure could be opened against her, aside the possible legal consequences for her under French law.

On 18 April 2019, the complainant submitted an internal administrative appeal contesting the Director-General's refusal to arrange for an external investigation of her imminent complaint of harassment and asserted that launching a complaint was simply the exercise of a right to which she was entitled. She asked the Director-General to set aside the 16 April 2019 decision rejecting her request for an external investigation, to assign the investigation to experts external to the organization, and to pay her material and moral damages as well as costs. On 3 May 2019, the Director-General rejected the complainant's appeal noting that, as no decision had yet been made to conduct an investigation and, *a fortiori* on the modalities of such investigation, her internal administrative appeal was not receivable. He confirmed that the Deputy Director-General would handle her complaint of harassment and would do so with the impartiality, objectivity and confidentiality required.

That same day, on 3 May 2019, the complainant lodged with the Deputy Director-General a formal complaint against the Director-General and the Head of HRD. Referring to various incidents leading up to the decision to renew her contract for two and a half years, she argued that those incidents amounted to harassment, discrimination and abuse of authority and asked the Organization to recognise that she was

the victim of such acts, to adopt measures to stop them, and to pay her material and moral damages. By a letter of 16 May 2019, the Deputy Director-General informed her that he had decided to commission a fact-finding investigation into her allegations against the Director-General, even though she had not lodged an administrative appeal against the Director-General's decision to renew her contract for two and a half years, a fact which, he argued, called into question the credibility of her complaint. He also informed her that the investigation would be managed by the Head of Legal Affairs with the support of a Legal Officer. As for her allegations against the Head of HRD, he had decided not to commission an investigation as there were not sufficient grounds to do so.

Prior to that, on 13 May 2019, the complainant had submitted a request for mediation against the Director-General's 3 May 2019 decision rejecting her request that the investigation be assigned to external experts. In his 30 May 2019 report, the Mediator concluded that no convincing evidence had been submitted that the internal investigation would be partial and not independent or that it would not be conducted in a professional manner and would entail conflicts of interest. He thus recommended that the complainant's request challenging the Director-General's decision not to entrust the investigation to external experts be rejected and that any irregularities in the process be raised as part of a future challenge to the final decision. On 4 June 2019, the Director-General rejected the complainant's request as inadmissible and confirmed that all decisions in the matter were to be taken by the Deputy Director-General.

On 16 July 2019, the Head of Legal Affairs submitted the investigation report concluding that there was no evidence of harassment, discrimination or abuse of authority, that the complaint rested on a misperception and that the Director-General had "not commit[ted] any prohibited conduct". She recommended that the case be closed. The Deputy Director-General accepted this recommendation, and he relevantly notified the complainant by a letter of 17 July 2019. The next day the complainant requested a copy of the investigation report in order to consider the full reasons for the decision but the

Deputy Director-General turned down her request for disclosure on grounds of confidentiality and referred her to the reasons set out in his 17 July 2019 letter.

Meanwhile, on 19 June 2019, the complainant went on certified sick leave, initially until 25 August, and then until 22 September 2019. In a letter of 2 August 2019, entitled “Recurrence of absences related to sickness”, the Director-General pointed out to the complainant that from July 2018 to 25 August 2019 she would have accumulated a total of 90 days of absence due to sickness, of which 82 days were in 2019. Recalling the provisions of the Staff Regulations related to absence for health reasons and sick leave (Annex VI), he warned her that he might be obliged to take a decision on her employment contract in line with these provisions, in the event her absences for medical reasons continued. In a follow-up letter of 30 August 2019, the Director-General indicated that further to the extension of her current sick leave to 22 September 2019, she would have accumulated a total of 111 days of absence due to sickness from July 2018 to 22 September 2019. Noting that her absence was creating difficulties, disruption and delays in the execution of the work plan in the Blanket project, he informed her he was considering terminating her contract of employment due to medical unfitness and frequent recurrence of short periods of illness. He invited her to provide her views, which the complainant did by a letter of 5 September 2019, in which she rejected as unjustified the reason given by the Director-General for proposing to terminate her contract, asserted her illness was service-incurred, and accused the Administration of subjecting her to further harassment and failing in its duty of care towards her.

On 23 September 2019, the ITER Organization’s occupational doctor examined the complainant and concluded that she was medically unfit for work and that being assigned to any position within the Organization would be highly damaging for her health. A medical certificate to that effect was subsequently issued. On 27 September 2019, the Director-General informed the complainant that further to her being declared medically unfit for any position in the ITER Organization, the Administration had relevantly informed its Life and

Invalidity Insurance provider, which had confirmed her entitlement to invalidity benefits pursuant to the provisions of the insurance contract. He asked her to provide her views, which the complainant did on 3 October 2019. Finally, by a letter of 11 October 2019, the Director-General notified the complainant of his decision to terminate, effective 10 April 2020, her contract of employment due to medical unfitness pursuant to Articles 5.4 and 6.3(a)(i) of the Staff Regulations.

Meanwhile, on 19 August 2019, the complainant appealed the 17 July 2019 decision to reject her complaint of harassment, discrimination and abuse of authority and to close the case. Under cover of a letter dated 11 September 2019, the Deputy Director-General forwarded to her a copy of the investigation report, which he had previously denied her on confidentiality grounds, and invited her to supplement her appeal within ten working days. On 13 September 2019, the Deputy Director-General informed her that he had decided to reject her appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, which confirms the earlier decision of 17 July 2019 rejecting her complaint of harassment, discrimination and abuse of authority, to recognise that the internal investigation on her complaint was improperly carried out, and to arrange for a new investigation to be carried out by an external expert. Alternatively, if the Tribunal refrains from ordering a new investigation, she asks it to find that she has been a victim of harassment, discrimination and abuse of authority. She claims material damages, including: (i) the salaries and allowances that would have been paid to her for a period of five years from the date of expiry of her earlier contract (1 June 2019), together with reimbursement of any sums she may be required to pay as national tax on the amount awarded by the Tribunal; and (ii) an amount equivalent to the loss of future pension benefits due to the premature termination of her contract. She also claims moral damages in the following amounts: (i) 100,000 euros for the harassment, discrimination and abuse of authority of which she was the victim; (ii) 50,000 euros for the ITER Organization's failure to adequately address her complaint of harassment, discrimination and abuse of authority; (iii) 20,000 euros

for its failure to consider her health condition and its worsening due to the events described in her complaint; and (iv) 50,000 euros for the impact that the harassment, discrimination and abuse of authority had on her career. She seeks 10,000 euros in legal costs.

The ITER Organization asks the Tribunal to dismiss the complaint. As the complainant did not have serious grounds to file it, it considers it an abusive and unnecessary procedure and requests that she be ordered to pay legal costs to the defendant in the amount of 10,000 euros.

### CONSIDERATIONS

1. The ITER Organization raises four receivability issues. The Tribunal will not address three of them, since the complaint is unfounded on the merits. The Tribunal will address in consideration 7, below, the receivability issue raised with regard to the complainant's fourth plea alleging "further acts of harassment".

2. In her first plea the complainant alleges that "[t]he Organization acted in a conflict of interest". In support of her plea, she contends that:

- (a) the ITER Organization does not have an independent office in charge of investigations, contrary to the Uniform Guidelines for Investigations, adopted by the Conference of International Investigators, which establish that "[e]ach Organization shall have an Investigative Office responsible for conducting investigation[s]";
- (b) in the ITER Organization's internal grievance mechanisms, unlike in many other organizations, there is no body (such as an appeal board) whose objectivity is guaranteed by the presence of staff representatives;
- (c) given that the persons accused of harassment were the Director-General and the Head of Human Resources, there was a serious risk that the staff of the ITER Organization could not objectively evaluate the conduct of the latter two. The officials entrusted with the investigation are all subject to the Director-General's

hierarchical authority, which includes the power to decide on the renewal of their contracts; and

- (d) the ITER Organization should have considered the complainant's request to arrange for an investigation to be carried out by investigators outside the ITER Organization; on the contrary, the complainant's request for an external investigation was immediately rejected.

The complainant's first plea is unfounded.

Section 6.3 of the ITER Organization "Policy against Harassment, Discrimination and Abuse of Authority" read in relevant part:

"The Human Resources Department (HRD), with the support of Legal Affairs [...] are responsible for investigating formally received harassment allegations [...]"

Thus, there is no rule of the ITER Organization providing that investigations be entrusted to an external body or to a body comprising a staff representative. In addition, the Uniform Guidelines for Investigations, adopted by the Conference of International Investigators, are not binding on the ITER Organization, as they have not been incorporated into the ITER Organization's internal legal framework. Since the investigation was entrusted to the office responsible for it in compliance with the applicable rules (that is, to HRD with the support of Legal Affairs), there is no violation of the complainant's terms of appointment.

3. As to the argument that the persons entrusted with the investigation are in a conflict of interest because they are subject to the hierarchical authority of the person accused of harassment (i.e. the Director-General), the Tribunal recalls its case law which states it is a general rule of law that an official who is called upon to take a decision affecting the rights or duties of other persons subject to her or his jurisdiction must withdraw in cases in which her or his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, the official may consider herself or himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice (see Judgment 4240, consideration 10). A conflict of interest occurs in situations where a



reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality. Even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest (see Judgment 3958, consideration 11). An allegation of conflict of interest or lack of impartiality has to be substantiated and based on specific facts, not on mere suspicions or hypotheses. The complainant bears the burden to prove a conflict of interest (see Judgments 4617, consideration 9, and 4616, consideration 6). The mere fact that the staff members entrusted with an investigation are ordinarily under the authority of the Director-General is not a reasonable ground to call their impartiality into question. In the present case, there is no evidence that they had received any instructions from the Director-General (see Judgment 4243, consideration 9). The complainant does not provide persuasive evidence about the existence of a conflict of interest, which is merely hypothetical and not grounded on specific facts. The complainant's argument that an internal investigation would have been partial was furthermore referred to a Mediator, who concluded, in his 30 May 2019 report, that no convincing evidence had been submitted that the internal investigation would be partial and not independent, or that it would not be conducted in a professional manner and would entail a conflict of interest. The complainant does not explain why the Mediator's conclusion was wrong.

4. In her second plea, the complainant alleges that “[t]he procedure was improperly managed”, submitting, in some detail, that:

- (a) in the course of the investigation she was not given the opportunity to confront the accused persons and witnesses directly and provide objections to their statements. The statements of the witnesses and the subject of the investigation were only reported to her orally during her second interview;
- (b) she was provided with a copy of the investigation report, including the minutes of the interviews, only after she had been notified of the outcome of the investigation and after she had lodged her internal appeal;

- (c) the minutes attached to the report were not a verbatim account of the contents of the interviews;
- (d) the investigations into complaints of harassment must be adversarial; and
- (e) the witnesses were not questioned over facts and expressed opinions about her personality.

5. The complainant's second plea is unfounded.

The applicable staff rules did not provide for cross-examination of the accused person and/or of the witnesses, nor do they require verbatim records of the interviews, which is not contrary to the case law (see Judgments 4579, consideration 3, and 2771, consideration 18). Therefore, the allegations that there were no verbatim records of the interviews and that the complainant was not allowed to cross-examine the accused persons and the witnesses fail. The case law requires that the person who lodged a harassment complaint be informed of the content of the interviews and be allowed to comment on them (see Judgments 4111, consideration 4, 4110, consideration 4, 4109, consideration 4, 4108, consideration 4, and 3875, consideration 3). In the instant case, the documentary evidence reveals that the complainant was informed during the investigation of the content of the testimonies and was allowed to comment on them. During her second interview, on 2 July 2019, she was informed of the content of the testimonies and was thereafter able to comment on them. Furthermore, she submitted, on 12 July 2019, a memorandum with her "Considerations regarding the minutes of the second interview of 2 July 2019". The applicable internal rules do not require that the person who lodged a harassment complaint be provided with the investigation report and be allowed to comment on it before the Director-General's decision on the harassment complaint is issued. Indeed, Section 8.3 of the ITER Organization "Policy against Harassment, Discrimination and Abuse of Authority", at paragraphs 6 and 7(a), read:

- "6. The investigator(s) shall prepare a confidential, detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged

prohibited conduct. The confidential report shall be submitted to the [Director-General] normally no later than three months from the date of submission of the formal complaint or report. However, this timeframe can be delayed upon justified reasons.

7. On the basis of the report, the [Director-General] shall take one of the following courses of action:
  - (a) If the report indicates that no prohibited conduct took place, the case shall be closed. The offender and the complainant shall be informed accordingly and provided with a summary of the findings and conclusions of the investigation;

[...]"

In the present case, the complainant was provided with the investigation report, together with the minutes of the testimonies attached to it. Even though she received the investigation report only after she had lodged her internal appeal, she was given ten further working days (by the Deputy Director-General's email of 11 September 2019) to supplement her appeal. She was asked to confirm by 12 September 2019 whether she wished to avail herself of this option, and she did not. Therefore, she was allowed to further comment on the investigation report, and she chose not to. Considering that she was able to rely on the investigation report during the appeal proceedings, the Tribunal is satisfied that her right to due process was not breached (see Judgment 4406, consideration 8).

In her second plea, the complainant has provided the Tribunal with additional arguments aimed at refuting the evidence gathered during the investigation, which were not submitted during the internal appeal. The complainant states that the witnesses "were not questioned over facts, of which they actually knew very little as they were not present at the discussion between the complainant and the [Director-General] of 2 November 2018". The complainant further contends that the witnesses were interviewed about the complainant's personality and motivation and expressed their point of view, which she contests. In brief, she complains about some witnesses providing opinions rather than reporting facts. This plea is unfounded. Firstly, the Tribunal observes that, although it is true that no witnesses were present at the 2 November 2018 meeting, it is also true that the witnesses were interviewed about various incidents reported by the complainant in her

3 May 2019 complaint, which they attended. Secondly, the circumstance that the witnesses expressed their opinion, in addition to reporting facts, is irrelevant because, in any event, the investigation report did not rely on those parts of the witnesses' statements. Indeed, the findings of the investigation report, of the decision to close the investigation, and of the final decision, were fact-based and did not consider the mere opinions expressed by the witnesses.

6. The complainant's third, fourth, fifth and sixth pleas are interconnected and to some extent overlapping.

In her third plea, under the heading "[t]he findings of the investigation are not reliable" the complainant submits that various facts were overlooked and asserts that:

- (a) whilst it is uncontroverted that during the 2 November 2018 meeting the Director-General accused her of being disloyal, the impugned decision and the investigation report ignored that such accusation was, by its nature, a verbal attack against her, who was the weaker party in the conversation, since her contract renewal was at stake; so it was inevitable for her to perceive the Director-General's attitude as aggressive – as it would have been for any other reasonable person in the same situation;
- (b) the investigators and the Deputy Director-General did not give an adequate interpretation to the concept of "loyalty", as the complainant was under no obligation to report her personal view regarding the prospects of the project; she was pressured by the Director-General to provide information on the adequacy of her line managers and colleagues in their roles and this allegedly amounted to a form of blackmail against her;
- (c) whilst it is uncontroverted that the Director-General organized a meeting on 8 November 2018 with the participation of the complainant, her line managers, and himself to clarify the situation and "ascertain whether or not the schedule could be met", both the investigators and the Deputy Director-General allegedly failed to recognize how distressing and destabilizing such an initiative was for her;

- (d) harassment, pursuant to the ITER Organization “Policy against Harassment, Discrimination and Abuse of Authority”, includes any “words, gestures or actions which are intended to [...] alarm [or] intimidate [...] another”. She asserts that indeed she was “alarmed” by (i) the Director-General’s inappropriate requests regarding details about her health, expressed in the 13 February and 3 August 2018 messages; (ii) the Director-General’s accusation of disloyalty; and (iii) the Director-General’s request to report on the adequacy of her supervisors. She adds that she was “intimidated”, when she expressed her intention to submit a harassment complaint, by the statements made by the Director-General in his email of 16 April 2019 regarding the possible legal consequences of submitting a complaint in bad faith;
- (e) the testimony of the Section Leader, Mr R., who acknowledged that the complainant was shocked after the conversation with the Director-General, was overlooked; and
- (f) the renewal of her contract for only two and a half years was a further act of discrimination and harassment, as there was no consideration of the current needs of the project or of her ability to meet them.

In her fourth plea, the complainant refers to “further acts of harassment”, which allegedly occurred after she lodged her internal harassment complaint and consisted in “numerous attempts by the ITER Organization to intimidate and discourage her from fully exercising her rights”; she refers to:

- (a) the Director-General’s email of 16 April 2019;
- (b) the 16 May 2019 letter of the Deputy Director-General allegedly suggesting that the credibility of her harassment complaint was weakened by the fact that she did not contest the two-and-a-half-year renewal of her contract;
- (c) the Director-General’s letter of 30 August 2019 announcing the prospect of terminating her contract;
- (d) the Director-General’s letter of 27 September 2019 asking her to comment on the prospect of her contract’s termination;

- (e) the Director-General's decision of 11 October 2019 terminating her contract;
- (f) the Director-General's interview during the investigation;
- (g) the circumstance that during the investigation the complainant was not allowed to be supported by anyone; and
- (h) the fact that her "Considerations regarding the minutes of the second interview of 2 July 2019", submitted after her second interview, were not properly considered.

In her fifth plea, under the heading "[t]he Organization's attitude regarding [her] health conditions is discriminatory", the complainant alleges that further acts of harassment and discrimination were:

- (a) the Director-General's requests for information on [her] medical condition, as such requests were "in violation of prescribed procedures"; and
- (b) the ITER Organization's "overall condescending approach" towards her disability; she considers that the teleworking arrangement was not a gracious concession, instead it was simply that the ITER Organization complied with its duty to provide adequate working conditions.

In her sixth plea, under the heading "[t]he conduct of the [Head of HRD] also amounted to harassment", the complainant alleges that the Head of HRD engaged in harassment by not supporting her against the Director-General and by not speaking to the Director-General on her behalf. He also ignored her observation that there had been no proper discussion on her contract renewal.

7. With regard to the complainant's fourth plea, the ITER Organization raises receivability as a threshold issue, basically alleging that the "further acts of harassment" were not "reviewed and decided upon" internally before the filing of the present complaint. The Tribunal observes that some of the facts and acts qualified by the complainant as "further acts of harassment" were either already reported internally (namely the Director-General's email of 16 April 2019, whose content is, in brief, recounted in the 3 May 2019 complaint of harassment), or

were related to the investigation process (namely the Deputy Director-General's note; the Director-General's interview during the investigation; the refusal that the complainant be supported by a person of trust during the investigation; and the weight given to her "Considerations regarding the minutes of the second interview of 2 July 2019", submitted after that second interview). Therefore, the ITER Organization's objection to receivability regarding those acts is rejected.

However, the Tribunal considers that the complainant's allegations regarding the following acts are outside the scope of the present complaint because they were not part of the investigation that led to the impugned decision:

- (i) the Director-General's letter of 30 August 2019 announcing the prospect of terminating her contract;
- (ii) the Director-General's letter of 27 September 2019 asking her to comment on the prospect of her contract's termination; and
- (iii) the Director-General's decision of 11 October 2019 terminating her contract.

8. In order to assess this case, it is appropriate, at this point, to recall the relevant staff rules.

Section 1.4 of the ITER Organization Code of Conduct, in relevant part, read:

"Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which are intended to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment."

Section 3.1 of the ITER Organization "Policy against Harassment, Discrimination and Abuse of Authority" described "[c]onduct that would not be considered as harassment" as follows:

"Situations of conflict and tensions are not automatically, nor necessarily, harassment. Decisions about performance, work assignments, office allocation, etc. may be perceived as unfairly negative by an individual affected. However, managers have a responsibility to give balanced, frank and constructive feedback and to take appropriate action; such decisions are

not harassment when taken fairly and in good faith. They may constitute harassment only when such feedback or action is unduly biased or used as retaliation against an individual.

Additionally, there is a wide range of ambiguous behaviour that might offend some people, but not others, particularly in a multi-cultural environment. It is believed that the vast majority of people rarely, if ever, intend to offend any colleague. The receiver of such unintentional offence is encouraged to politely address the issue directly with the perpetrator. To avoid misunderstandings and unnecessary upset feelings, all staff have a responsibility to be sensitive to their own words and actions, and to communicate calmly and professionally when they feel offended by ambiguous behaviors.”

Section 8.1, paragraph 3, of the ITER Organization “Policy against Harassment, Discrimination and Abuse of Authority” relevantly read:

“Allegations of harassment must be supported by specific facts presented by the complainant, who bears the burden of proving harassment. A formal allegation of harassment requires that the [ITER Organization] investigate the matter promptly and thoroughly, and accord full due process and protection to the individual accused (hereinafter “offender”, which does not prejudice the outcome of the procedure). The facts must be determined objectively and in their overall context.”

9. In the Tribunal’s view, the complainant has not established it was not open to the ITER Organization to reach the conclusion it did in the circumstances. The complainant has offered no reliable evidence that either the Director-General or the Head of HRD perpetrated harassment, discrimination and abuse of authority. The incidents reported by the complainant, considered in their overall context, do not cross the threshold of work discussions and, even though there might have been some tensions or different views or disagreements, the conduct of the Director-General and of the Head of HRD do not show bad faith and unfairness, and cannot reasonably be perceived as intimidating, offensive, humiliating, and/or alarming.

This conclusion is confirmed by the following assessment of each incident reported by the complainant, examined individually.



10. There is no persuasive evidence that during the 2 November 2018 meeting the Director-General had an aggressive attitude against the complainant; it instead appears that he was surprised and concerned to learn from the complainant that the Blanket project might take more than the scheduled two years to be finalized, contrary to the information he had received by the other participants in the project. Her loyalty was questioned by the Director-General to the extent that she was expected to have informed him of her concerns about the project agenda at an earlier stage, in compliance with the officials' duty of loyalty towards the Organization. In addition, there is no evidence that during the 2 November 2018 meeting the Director-General threatened the complainant with dismissal. The alleged circumstance that the complainant was under no obligation to report her personal view regarding the prospects of the project does not entail that loyalty was not at stake, since loyalty is a concept that goes beyond specific duties and obligations. There is no evidence that the complainant was pressured by the Director-General to provide information on the adequacy of her line managers and colleagues in their roles and that therefore she was, as she contends, in some way "blackmailed". Considering the above, the Director-General's concerns about the project and his doubts about the complainant's loyalty were reasonable managerial reactions, thus they did not amount to harassment or abuse of authority.

11. There is no evidence that the scheduling of a further meeting on 8 November 2018 (in order to discuss the project agenda) was tainted by bias against the complainant, as the urgency of the meeting was a result of the concerns expressed by the complainant herself during the previous meeting. Nor did the complainant advance health reasons which prevented her from participating. It was not reasonably foreseeable that the mere scheduling of a meeting could cause distress or alarm to the complainant and, even if it happened, it cannot nonetheless be construed as an act of harassment, as defined in section 1.4 of the ITER Organization Code of Conduct. In addition, no witnesses reported that during the 8 November 2018 meeting the Director-General's attitude or behaviour amounted to harassment or abuse of authority, as defined in the ITER Organization Code of Conduct.

12. With regard to both the 2 and 8 November 2018 meetings, the Tribunal does not accept the complainant's contention that the testimony rendered by the Section Leader, Mr R., was overlooked. In his testimony, Mr R. does not refer to the events of the 2 November 2018 meeting, as he was not present, nor does he report any incidents occurring during the 8 November 2018 meeting. In addition, Mr R. denies that he and other colleagues, after the 8 November 2018 meeting, deliberately ignored the complainant and took the stairs rather than the elevator in order to exclude or humiliate her. Mr R. makes reference to what the complainant told him about her perception and feelings, but does not state that the Director-General's behaviour could reasonably be perceived as harassment.

13. Taking the complainant's medical condition into consideration, the Director-General had accepted the teleworking arrangement since 2015 and its renewal in February 2019, and he even asked whether more days of telework were required to meet the complainant's needs. This appears to demonstrate the Director-General's positive attitude towards the complainant's situation. The Director-General's request for information about her medical condition was related to the teleworking arrangement and cannot be assessed as an undue intrusion into her private life. Moreover, there is no evidence that the ITER Organization adopted an "overall condescending approach" towards her disability, rather than considering she had a right to a properly accommodated work arrangement. As a matter of fact, since 2015 a teleworking arrangement had been adopted and regularly renewed.

14. The Director-General's decision to renew the complainant's contract for two and a half years, rather than five years, was justified by the needs of the ITER Organization, namely the planned finalization of the Blanket design by April 2021, according to the schedule approved by the ITER Organization Council in 2016. At the time the incidents reported by the complainant took place, the project she was working on was due to be finalized within the following two years. The witnesses confirmed that the project was at an advanced stage and would not require a full-time Blanket Engineer Analyst for more than another two

and a half years. The complainant's ability was never questioned and her medical condition was not considered an obstacle to the contract renewal; the length of the renewed contract appears to be based solely on the ITER Organization's needs and not on the complainant's suitability and capacity.

15. The incident reported to have occurred after the 8 November 2018 meeting with the Director-General (i.e. that the managers talked to each other and took the stairs rather than the elevator) cannot be construed as an act of harassment aimed at intentionally excluding the complainant from the conversation, as there is no objective indication of such, but solely the mere subjective perception of the complainant.

16. There is no basis for classifying the conduct of the Head of HRD as harassment, since the complainant's allegation is that the Head of HRD did not support her against the Director-General. Such lack of support, even if it were proven, and it is not, does not align with the relevant definition of harassment.

17. The complainant further contends that she was "intimidated" when she expressed her intention of submitting a harassment complaint. The complainant wrote to the Director-General on 12 April 2019, announcing her intention to lodge a formal complaint of harassment and abuse of authority against him and the Head of HRD for the alleged incidents which occurred mainly during the discussions that preceded her contract renewal. The Director-General replied on 16 April 2019, providing the complainant with all relevant information regarding the requirements for a formal harassment complaint. In this context, the Director-General made two statements that are relevant with regard to the complainant's argument. Firstly, he reminded her that the complaint "should be made in good faith which means that the complainant must believe that the way they perceived the alleged harassment reflects the facts. Bad faith implies 'an element of malice, ill-will, improper motive, fraud or similar dishonest purpose'". Secondly, he added: "I would like to remind you that, if the complaint is made in bad faith, set aside the possible legal consequences for the complainant according to French

law, an [ITER Organization] misconduct procedure can be opened, as an [ITER Organization] staff shall not undermine the dignity of other staff in the ITER Organization nor cause an excessive and useless wrongs [sic]”.

The complainant’s case is based on the premise that she was intimidated. Plainly, she was not deterred from filing a complaint of harassment as, in fact, she did. There is otherwise no persuasive evidence bearing upon whether she was intimidated. This plea is unfounded.

18. The events which occurred during the investigation, as alleged by the complainant in her fourth plea, did not amount to harassment.

As to the Deputy Director-General’s letter of 16 May 2019 and the statement contained therein that “[a]lthough [the] circumstance [that the complainant had not filed an appeal against the decision to renew her contract for two and a half years] could somehow call into question the credibility of [her] complaint”, they do not amount to harassment, as they only contain the Deputy Director-General’s personal point of view on her complaint in a way that is neither aggressive nor intimidating, nor aimed at discouraging her from lodging a complaint of harassment. Again, there is no persuasive evidence bearing upon whether she was intimidated. This plea is unfounded.

The Director-General’s interview during the investigation is a statement of the accused person during an investigation process and, therefore, cannot be used against its author and be construed as harassment.

The circumstance that during the investigation the complainant was not allowed to be supported by a person of trust cannot be construed as harassment, as no internal rules provided for the assistance of the alleged victim of harassment by third parties; therefore, the rejection of the complainant’s request was lawful.

Finally, there is no evidence that the complainant’s considerations after her second interview were not properly taken into account.

19. In conclusion, the complainant's claims are unfounded, and the complaint will be dismissed.

20. The ITER Organization submits a counterclaim for costs alleging that the complainant did not have serious grounds to file her complaint, which hence was an abusive and unnecessary procedure. Since the ITER Organization initiated the investigation, it can be inferred that the ITER Organization itself had excluded that the complainant's harassment complaint was lodged in bad faith. Thus, the present complaint cannot be viewed as having been filed in bad faith or as being frivolous or vexatious. Therefore, the counterclaim will be dismissed.

#### DECISION

For the above reasons,

1. The complaint is dismissed.
2. The counterclaim for costs is also dismissed.

In witness of this judgment, adopted on 18 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ