

**R. (No. 18)**

*v.*

**IAEA**

**137th Session**

**Judgment No. 4756**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighteenth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 19 March 2019 and corrected on 24 April, the IAEA's reply of 19 August 2019, the complainant's rejoinder of 16 December 2019 and the IAEA's surrejoinder of 8 April 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 challenges the decision not to conduct an investigation into his allegation of breach of confidentiality and to deny his request for compensation.

By an email of 2 February 2017, the complainant informed the Director, Division of Human Resources (MTHR) that, notwithstanding its confidential nature, a letter he had addressed to the Director General was accessible to all staff on the IAEA's Electronic Records Management System (ERMS). The document in question was a letter of 11 November 2016 in which the complainant had requested that the Director General review decisions relating to a recruitment procedure. The complainant reported a breach of confidentiality in relation to that letter, pursuant to

Appendix G to Administrative Manual Part II, Section 1 (AM.II/1) “Procedures to be Followed in the Event of Reported Misconduct”.

The complainant also made similar allegations of breach of confidentiality relating to two performance-related documents. Those allegations became the subject of the complainant’s twelfth complaint before the Tribunal which resulted in Judgment 4522, delivered in public on 6 July 2022.

By a letter of 4 April 2017, the Director, MTHR informed the complainant that his allegations of breach of confidentiality had been referred to the Director, Office of Internal Oversight Services (OIOS) for investigation and that OIOS had since confirmed that it had initiated an audit.

On 9 March 2018, the complainant requested that the Director, OIOS provide him with an update on the status of its investigation into his allegations.

On 15 March 2018, the said Director informed the complainant that the findings of the OIOS audit had been submitted to management for action and that, whilst OIOS does not share its audit reports with staff members, the findings of the audit did not justify proceeding with an investigation into the matters raised by the complainant.

On 4 May 2018, the complainant requested the Director General to review the decision of the Director, OIOS not to launch an investigation into his allegations of 2 February 2017 and claimed 20,000 euros in moral damages.

The complainant separated from service on 31 May 2018.

By a letter of 7 December 2018, the Director General informed the complainant that he saw no procedural error in the process by which OIOS came to the determination not to proceed with an investigation, in light of the findings of the ad hoc audit. OIOS found that the accessibility of the letter of 11 November 2016 was the result of a design flaw in the application, rather than intentional human intervention that would warrant the opening of an investigation into possible misconduct. Accordingly, his request for review was denied, as was his request for compensation. The letter also noted that, as a former staff member, the

complainant could challenge the Director General's decision directly before the Tribunal. That is the impugned decision.

The complainant requests the Tribunal to set aside the impugned decision, to the extent of remitting the case back to the IAEA to further investigate the breach of confidentiality and to identify all officials responsible and hold them accountable. He claims 50,000 euros in material damages, 100,000 euros in moral damages, 20,000 euros in consequential damages, as well as 30,000 euros in exemplary damages, with interest on all amounts awarded. He also seeks costs in the amount of 2,000 euros. He further asks the Tribunal to join the present complaint with his twelfth complaint.

The IAEA asks the Tribunal to reject the complaint as partly irreceivable and entirely unfounded.

#### CONSIDERATIONS

1. In his eighteenth complaint, the complainant impugns the Director General's decision of 7 December 2018 to reject his request for review of the decision of the Director, Office of Internal Oversight Services (OIOS) not to conduct an investigation into his 2 February 2017 allegations of breach of confidentiality and his request for compensation.

2. The complainant submits, in essence, that the decision of the Director General to uphold the Director, OIOS' decision not to proceed with an investigation is tainted with procedural flaws, abuse of authority, error of law and lack of proportionality. In his rejoinder, he maintains that the IAEA was under a positive obligation to conduct an investigation pursuant to paragraph 15 of Administrative Manual Part II, Section 8 (AM.II/8) "Protection of Personnel Confidential Information" and AM.II/19 "Information Security". He further contends that the impugned decision results from a long series of acts, evidencing gross mismanagement compromising the complainant's career, dignity and rightful interests, which taken as a whole amount to institutional harassment; that he has suffered damage as a result of the impugned decision and the alleged breach of confidentiality arising from the

accessibility of his letter to the Director General; and that the IAEA has committed an abuse of process by failing to make the requisite disclosure of evidence. In his brief, the complainant requests the Tribunal to join the present complaint with his twelfth complaint.

3. The factual background of the present complaint is linked to the complainant's twelfth complaint, in which the complainant challenged the decision not to conduct an investigation into his allegations of breach of confidentiality with regard to two performance-related documents and the refusal to disclose the two said documents. On 6 July 2022, the Tribunal delivered Judgment 4522, which dismissed the complainant's twelfth complaint as partly irreceivable as to his allegations of institutional harassment and as otherwise unfounded.

4. The complainant's request for joinder is now moot, as his twelfth complaint has already been decided in Judgment 4522.

5. The Tribunal notes that the facts and arguments presented by both parties in the present complaint are remarkably similar to those advanced in the complainant's twelfth complaint. The IAEA argues that the complainant did not raise the issue of institutional harassment in his internal appeal, that is, in his request for review of 4 May 2018. This is correct. Hence, inasmuch as the complainant's allegation of institutional harassment was not raised in his request for review, this issue is outside the scope of the present case.

6. As regards the central issue of whether the IAEA was under an obligation to initiate an investigation into the complainant's allegations of breach of confidentiality, the Tribunal reaches the same conclusion, as already elaborated in Judgment 4522, considerations 6 to 10, that OIOS was not obliged to investigate the complainant's allegations. The reasons for this are summarized as follows: firstly, according to paragraph 8 of the OIOS Charter, it was reasonable for OIOS to conduct an ad hoc audit in relation to the alleged misconduct concerning the document in the Electronic Records Management System (ERMS) and it was also within its authority; secondly, the OIOS audit report entitled

“Assessment of Incident Related to Livelink Access Rights” made it clear that the availability to all staff members of the complainant’s letter to the Director General dated 11 November 2016 was caused by “a design flaw that was embedded in the ERMS application”; and therefore, there was no cause to launch an investigation against the alleged misconduct of specific staff members in the context of Appendix G “Procedures to be Followed in the Event of Reported Misconduct”. Obviously, “a design flaw embedded in the ERMS application” is not covered by the “unauthorized disclosure” category contained in both paragraph 15 of AM.II/18 and paragraph 1.8 of AM.II/19; and thirdly, as the audit was sufficient to clarify the temporary availability to all staff members of the 11 November 2016 letter, it was open to OIOS to close the case without initiating an investigation. The Tribunal also recalls its well-settled case law that the decision whether or not to initiate an investigation is taken at the organization’s discretion (see, for example, Judgment 4039, consideration 10). The Director General did not err in law in concurring with OIOS’ assessment and in deciding not to investigate the matter, nor was there any procedural flaw or lack of proportionality that would vitiate the Director General’s decision. The complainant’s claim of abuse of authority is also unsubstantiated, as he does not provide evidence to show that the decision was taken in bad faith or for an improper purpose (see, for example, Judgments 4345, consideration 6, and 4261, consideration 10).

7. The complainant alleges that he has suffered injury as a result of the impugned decision and the alleged breach of confidentiality arising from the accessibility of his letter to the Director General on the Livelink platform. As stated above, the Director General lawfully exercised his discretion in deciding to uphold OIOS’ decision not to open an investigation. The complainant’s request for damages in relation to the impugned decision is therefore dismissed.

8. The Tribunal has addressed the issue of the IAEA’s duty to maintain the confidentiality of a staff member’s personnel information, as stated in Judgment 4012, consideration 3:

“[T]he filing of confidential personnel information in a publicly accessible email folder constituted a breach of the Organization’s duty to maintain the confidentiality of a staff member’s personnel information. The complainant, however, did not suffer any damage because of this breach. Leaving aside the fact that the complainant did not submit any evidence whatsoever let alone evidence establishing damage to his reputation or otherwise [...] As soon as the emails were located, they were immediately removed. Taking this into account, there will be no award of moral damages for the breach.”

The filing of the letter of 11 November 2016, which contained confidential information, in electronic folders accessible to all staff members constituted a breach of the organization’s duty to maintain the confidentiality of a staff member’s personnel information. In the present case, however, the Director, Division of Human Resources (MTHR) took immediate steps to remedy the design flaw in the ERMS thereby preventing the document from being accessible. The IAEA’s Livelink platform was upgraded to eliminate the risk of such a flaw occurring in the future. In these circumstances, the complainant has not submitted evidence establishing damage to his reputation or other injury arising out of the temporary accessibility of the abovementioned letter. As the complainant has not presented any persuasive evidence in support of his claim for damages, this request must be rejected.

9. The complainant further alleges a violation of Article 10 of the Universal Declaration of Human Rights. As the Tribunal’s jurisprudence has firmly established, the complainant’s rights are those derived from the Staff Regulations and Staff Rules and from the general principles of law applicable to international organizations (see, for example, Judgment 2662, consideration 12).

10. The Tribunal does not consider the Administration’s review period for addressing the complainant’s allegations to be unreasonable in the circumstances of the present case, given the time required by the IAEA to review the audit report and to deal with concurrent requests for review and overlapping allegations of misconduct made by the complainant. Moreover, the complainant has not articulated the adverse impact which the alleged delays had on him (see, for example, Judgments 4392, consideration 12, 4231, consideration 15, and 4147,

consideration 13). His request for compensation for procedural delays is accordingly rejected.

11. As the complainant has not provided any evidence or analysis to establish that there was bias, ill will, malice, bad faith or other improper purpose on which to base an award of punitive damages (see, for example, Judgments 4286, consideration 19, and 3419, consideration 8), his request for exemplary damages must therefore be rejected.

12. In light of the above reasons, the complaint is irreceivable in part and unfounded in its entirety and must be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 18 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER