

**THE ADMINISTRATIVE TRIBUNAL
OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

Case No. 2019/AT/08

Appellant

vs

European Bank for Reconstruction and Development,

DECISION

**by a Panel of the Administrative Tribunal comprised of
Mr Chris de Cooker (Chair)
Professor Giuditta Cordero-Moss
Mr Michael Wolf**

18 February 2020

I. Introduction

1. In the present appeal submitted by e-mail on 23 October 2019 (“Appeal”), Appellant requests the Administrative Tribunal of the European Bank for Reconstruction and Development (“Tribunal”) to annul a President Administrative Review Decision dated 30 July 2019 (“PARD”), and to grant other remedies.
2. The challenged PARD rejected the Report and Recommendations of the Administrative Review Committee (“ARC”) ARC 39/2018 dated 1 July 2019 (“ARC Report”).
3. In a first recommendation the ARC recommended granting the amount of € 2,500 in respect of delay, with the argument that the six month period between the lodging of a complaint and the passing of the Chief Compliance Officer (“OCCO”) conclusion to the Managing Director Human Resources (“MDHR”) did not meet the requirement that international organisations investigate allegations promptly. The PARD held that during these six months the Bank took all the steps required by its internal law and acted in compliance with international standards resulting from the practice of other international organisations and the jurisprudence of international administrative tribunals.
4. The PARD also rejected the second ARC recommendation that Appellant be granted the amount of € 5,000 in respect of the Bank’s failure to properly recognise Appellant’s rights to have in place a procedure for the processing of his complaint that sits outside of the Conduct and Disciplinary Rules and Procedures (“CDRPs”). The ARC considers that persons in this situation should be given the possibility to challenge the outcome of the OCCO investigation and that, to this end, they should be provided with more information and with, at least, a redacted version of the investigative report. The PARD rejected this recommendation since it considers that the Bank complied with its internal law, since Article 18.01 of the CDRPs provides that “the person who initially reported the suspected misconduct [...] shall not be entitled to review the Investigative Report” as well as with the practice of peers and case law of certain international administrative tribunals.
5. The PARD added that under its internal law, which includes general principles of international administrative law, the Bank has a duty to investigate allegations of misconduct promptly and thoroughly. In this respect, Appellant was provided with all relevant information

about the steps taken during the HR assessment and the OCCO investigation, granting him the opportunity to assess whether the Bank investigated the matter promptly and thoroughly.

6. It concluded on this point that Appellant only had standing to challenge the investigative process conducted by the Bank but not the outcome of the OCCO investigation. Indeed, he could only challenge administrative decisions that are in breach of his terms and conditions of employment and the OCCO findings that no misconduct had occurred have by themselves no bearing on the terms and conditions of Appellant's employment.

7. Appellant (i) requests an oral hearing, (ii) requests the Tribunal to order the production of relevant documents, (iii) asks permission to submit new evidence, and (iv) applies for anonymity.

8. Appellant requests the Tribunal

- to quash the underlying MDHR Decision as arbitrary;
- to determine that the Appellant has been subject to an abuse of authority / unlawful behavior and unfair / demeaning treatment;
- to award material and moral damages;
- to order the Bank to implement procedures in order to make the Bank's internal law compliant with general principles of international administrative law; and
- to award reasonable expenses and legal costs.

9. Pursuant to paragraph 7.01 of the Directive on the Appeals Process, the Tribunal is to rely on the finding of facts made by the ARC, subject to very limited exceptions not applicable here. However, the legal evaluation of the facts and the application of the law to those facts are the competence of and are to be carried out independently by the Tribunal in accordance with the applicable law.

II. Procedural History

10. The Appeal was filed on 23 October 2019.
11. The Bank submitted its Response on 22 November 2019.
12. On 29 November 2019, Appellant submitted comments on the Bank's Response and reiterated his request for an oral hearing.

III. The Findings of Fact in the ARC Report

13. On 26 April 2018, Appellant lodged a request for review under the Administrative Review process, which was responded to on 25 May 2018.

14. The Request for an Administrative Review Decision ("RARD") dated 23 July 2018 was forwarded by the President to the ARC on 10 August 2018. The RARD sought to challenge:

- (i) The decision of the MD ICA of 6 October 2017 as confirmed by MDHR on 17 November 2017, that the Staff Member's request to remove all sub-ratings / comments and to amend his 2015 performance evaluation was not receivable ("the Performance Evaluation Decision").
- (ii) The conclusion of the Chief Compliance officer ("CCO") that the actions of the Head of the Team, with respect to the 2015 performance appraisal process, were not tantamount to misconduct ("the Investigatory Decision").
- (iii) The decision of MDHR dated 27 February 2018 to accept the findings of OCCO that the conduct of Head of the Team was not tantamount to misconduct, and to refer for managerial action the allegations of improper behaviour in connection with the 2015 performance appraisal process ("the Managerial Action Decision").

15. In his decision of 10 August 2018, the President considered that the conditions of section IV.6.4.1.b of the Directive of the Administrative Review Process were not met in respect of the Performance Evaluation Decision, as the request was out of time. He further considered that the request to review the Investigatory Decision of OCCO did not meet the requirements of section IV.3(a)(ii) and section IV.6.4.1(d)(i) of the Directive and was

therefore inadmissible, and that any challenge to the President's decisions on jurisdiction is a matter for the Tribunal. Lastly, the President determined that the request for a review of the Managerial Action Decision did meet the requirements set out in section 6.4.1(d) of the Directive. Accordingly the ARC concerned itself solely with the latter.

16. The ARC summarised the facts as follows.

The Staff Member joined the Bank in April 2007 and was promoted to Associate Banker in April 2009 and Principal Banker in April 2012. He was based in [a Team in a regional office...]. In August 2014 he was geographically reassigned to [...a...] Team in London. [...]

In January 2015 he had his annual appraisal in respect of 2014 which was positive. He was subsequently thanked for his hard work (email 26 January 2015). His July 2015 mid-year performance did not disclose any concerns, and he understood that he was on track to achieve his objectives. He considered the meeting to be very positive. The mid-year review was with [the line manager].

On 21 January 2016 the Staff Member had his 2015 performance review discussion with [the line manager...]. He considered the meeting to be positive. His 2016 objectives were discussed. He awaited receipt of the appraisal form duly filled in by [the line manager]. So far as he was concerned he was left in no doubt that this was the formal appraisal meeting,

On 27 January 2016 [the line manager] requested another appraisal meeting with the Staff Member at which [they] were joined by [the Head of the Team. The latter] had not been involved in the appraisal of the Staff Member since 2014. [He] was not the line manager of the Staff Member. The involvement of [the Head of the Team] suggested that for whatever reason, he felt the proposed gradings of the Staff Member needed to be reviewed. In the meeting [the Head of the Team] told the Staff Member that he considered his performance to be poor and that he would be rated as "meets some expectations". He stated that this was in the "bottom 10% of all staff". The Staff Member was shocked by this and the content of the appraisal form that he received the next day from [the line manager], which confirmed his grading as "meets some expectations" and gave an equivalent grading in all the six basic EBRD skills and behavioural competencies.

In a subsequent meeting the Staff Member asked [the line manager], why she had graded him in this way to which she had responded that she was not his line manager and she had not assigned him this rating. She confirmed that he had been placed in the bottom 10% of all banking staff and that any concerns with regard to his appraisal and rating should be raised with [the Head of the Team].

On 28 January the Staff Member sent an email to [the line manager and the Head of the Team] challenging the content of the 2015 appraisal indicating that he was so upset by what had happened that but for having been temporarily assigned to London, his

reaction would be to resign and leave the Bank. The email was courteous and respectful. In response on 28 January he received an email from [the line manager] stating that the performance ratings 1 and 2 post-calibration was between 15 and 20% i.e. he was in the bottom 15-20%.

On 2 February he made clear that he did not agree with the appraisal outcome and asked to meet to discuss the matter. The Staff Member was told that this was how the managers assessed and perceived his work, and that the overall rating of “meets some expectations” and the individual ratings would not be changed but that some comments would be altered. The Staff Member refused to sign the 2015 performance evaluation.

Despite the grading being an Administrative Decision, the Staff Member did not challenge it formally, but it is evident that he continued to disagree with it and that the grading greatly upset up. He applied for a number of internal vacancies throughout 2016 which, despite what he perceived to have been his relevant experience skills and qualifications, he was not interviewed for any of them.

In January 2017 the Bank announced a voluntary separation programme and the Staff Member applied on 9 February 2017.

On 23 March 2017 he was advised by [the line manager] and the HR Business Partner that his VSP application had not been accepted. His line manager [...] told him that she considered him to be an excellent banker, that the team wanted to retain him, that he was very important to the team and that he underestimated his skills and competencies. On 27 March 2017 he was advised that his application had been turned down as he had a “critical individual skills contribution”.

In light of the reasons given for his application for voluntary severance being turned down on 19 April he filed a review under the normal administrative process in respect of his not being promoted to Senior Banker during the 2016 appraisal year.

On 25 April 2017 the Staff Member met with HR and [the Head of the Team] to discuss the situation.

In the presence of two HR Officers [the Head of the Team] explained that the 2015 performance appraisal had been assigned to him “by mistake” based upon a number of non-performance related factors such as administrative and budgetary factors, but mainly because he was in a TC externally funded position and on a different “not his” budget. He said

“for me, you are a good banker, regardless of your performance rating and I do not care what rating you have....ratings do not matter....your rating does not affect anything in your case”.

When the Staff Member highlighted the effect that the incorrect rating had upon him, [the Head of the Team] disagreed stating “*your salary is already good and is not affected by the appraisal, ratings do not matter for promotions or anything, PBC difference between ratings is only a few percent, no big deal...I made a mistake on a*

rating last year due to many factors such as budget and administrative. I am ok to change it from 2 to 3 now if you want; I have no problem with this”.

When the Staff Member challenged why, if he was highly regarded he had not been promoted to the post of Senior Banker nor even nominated, [the Head of the Team] responded that this was a good point and that promotion to the next level could be discussed. When the Staff Member continued to challenge the issue [the Head of the Team] said

“if you do not like something, you can always resign without the package”.

Following a limited internal investigation by HR, on 3 July 2017 the HRBP informed the Staff Member that

“it appears plausible that your 2015 performance appraisal has not been fully accurate”.

On 17 July 2017 the Staff Member lodged a report alleging improper behaviour by the [...] Team Director for assessment by HR under the RWPs. The complaint indicated that in light of the disclosures made following the VSP application, in the meeting with [the Head of the Team], and his admission that the 2015 annual appraisal grading had been an error, his conduct in 2015 amounted to an abuse of authority, harassment. All his actions had improper motives as [the Head of the Team] had deliberately or intentionally distorted the 2015 performance appraisal and unreasonably impeded the Staff Member’s ability to work effectively.

On 20 July 2017 the Staff Member was informed that his 2015 overall performance rating had been changed to “meets expectations” but that the comments and individual ratings were un-amended.

In accordance with the procedure under the RWPs, the matter was reviewed by HR and having applied the appropriate test under paragraph 7 of the RWPs, the matter was referred to the CCO for investigation under the CDRPs. The Staff Member was informed of this on 16 August 2017.

On 5 September 2017 the Staff Member was contacted by the OCCO investigation officer and informed about the investigation process. The OCCO investigation officer also requested to speak with the Staff Member. It was agreed that they would speak by telephone or communicate by email as the Staff Member was on medical leave until 25 September 2017. The Staff Member was advised that the matter was to be formally investigated and that there were three possible outcomes:

- (i) Recommendation with disciplinary measures to be imposed.
- (ii) Written warning.
- (iii) No further action.

On 13 September 2017 the Staff Member chased the investigating officer. The investigating officer responded that day suggesting that he would put his questions in writing and that

“from reading the material that has been sent to me by [...], there appears to be broad agreement among all involved regarding the facts, with remedies, having been implemented through HR. With HR’s assessment being fairly comprehensive, my list of questions should not be too long”.

The officer made clear that *“only very limited information regarding the outcome will be shared with you”*. Later that day questions were raised by the officer and answers were provided by the Staff Member. On 14 September 2017 the officer informed the Staff Member that he would

“now (our emphasis) make arrangements to interview [the Head of the Team] regarding the complaint and will update you on progress in due course”.

In fact the Staff Member was not kept up-to-date. On 12 October he chased the investigator for an update and was told that there were no developments to report. The investigator stated *“there are significant due process rights that apply to a staff member suspected of misconduct which must be observed”*. He stated that he anticipated *“a conclusion in early November”* (email 12 October).

It was not until 27 November 2017 that the inquiry officer notified [the Head of the Team] of a *“notice of conduct of formal investigation”* (the Bank has not explained this delay). [The Head of the Team] was interviewed the following day (28 November 2017). When interviewed, the investigating officer could not explain what he meant by *“significant due process rights that applied to the Staff Member”* as an explanation for the delay, especially as [the Head of the Team] had not been interviewed, nor could he explain why despite saying on 13 September that he would “now” arrange to interview [the Head of the Team], he had not done so until a request on 27 November which led to [the latter] being interviewed on 28 November.

An Investigative Report was prepared on 31 January 2018, a further two months later, and on 6 February 2018 the report and a confidential memorandum (which the Bank has refused to disclose to the Committee – but which is described as a recommendation in the Bank’s submission at paragraph 2.28) was sent to the MDHR by the CCO.

The investigating officer could provide no plausible explanation to the Committee as to why it had taken two months to prepare the report bearing in mind that aside from the Staff Member, only [the Head of the Team] had been interviewed, and on 13 September he had said that in light of the assessment that had come through from HR there was broad agreement among all involved regarding the facts and remedies. As such the only real issue was whether or not the conduct warranted an accusation of misconduct. The investigating officer did refer to another complaint that the Staff Member had raised, but we do not consider that comes close to explaining the overall delay. The CCO informed the Committee that whilst NDB’s had a general policy of concluding investigations within six months, her expectation was that an investigation

would be completed within three months. This investigation, which involved few conflicts of fact, had taken 5.5 months.

The email from the Principal RWP Employee Relations dated 27 February 2018 sent to the Staff Member stated

“on 6 February 2018, Hannah received from OCCO the outcome of their investigative process”.

“In accordance with paragraph 15 of the Bank’s harassment-free and Respectful Workplace Procedures (RWPs), Hannah, on the basis of, and within 15 working days of receipt of the outcome of OCCO’s investigative process has asked me to advise you that [the Head of the Team’s] alleged improper behaviour was determined by OCCO as not tantamount to Misconduct”.

“However, Hannah has taken the decision to refer this matter for managerial action in accordance with paragraphs 13, 14 and 15(2) of the RWPs”.

The Staff Member raised a series of queries in an email of 17 April which were promptly answered on 20 April. The Bank sought to reassure the Staff Member that the matter had been properly investigated, and that merely because OCCO had reached a conclusion that [the Head of the Team’s] actions were not tantamount to Misconduct, that did not mean that the Bank condoned his behaviour. Indeed the Staff Member was told that the individual concerned had been met with by his manager and the MDHR with regard to the outcome of the investigation.

HR pointed out that as regards the Investigative Report, what was disclosed to the Staff Member was a matter for OCCO not HR. It does not appear that the Staff Member asked for further disclosure from OCCO at the time.

The email did explain that the CCO had reached a conclusion that a formal accusation of Misconduct was not warranted and had made no recommendation to the MDHR that a formal accusation be brought against him. The email pointed out that absent such a recommendation the MDHR was not in a position to open a disciplinary process or impose disciplinary measures against [the Head of the Team].

IV. The Appellant’s position

17. Appellant maintains that the decision of MDHR, which determined that there was insufficient evidence that Appellant was subject to any abuse of authority or any other unlawful behaviour in the context of his 2015 performance appraisal process, is unlawful. He adds that the ARC did not make a recommendation in this respect because the Bank has no complaints or grievance procedure in place under which individuals can raise a complaint over

the treatment to which they have been subject and have it investigated as a stand-alone complaint. This is according to the ARC a material and unlawful failure on the part of the Bank. He submits that MDHR's decision affects him personally and that he therefore has a right to challenge it.

18. Appellant alleges that the PARD is unlawful, arbitrary and / or is inconsistent with or not taken in accordance with Appellant's terms and conditions of employment (including, but not limited to, general principles of international administrative law) and thereby constitutes a breach of the terms and conditions of his contract of employment.

19. He, first of all, submits that the PARD ignored the ARC's report and did not take into account this report as required.

20. Second, he considers that the MDHR decision was arbitrary, ignores the Bank's internal law and is tainted by an abuse of discretion as it was made on the basis of inaccurately gathered facts, took into consideration irrelevant factors and failed to take into account relevant ones. It also relied on a flawed OCCO investigation.

21. In this respect he submits that the MDHR decision is a discretionary decision taken towards him. As such, a discretionary decision can only be a lawful decision if it is made on a reasonable and observable basis, on valid grounds, not arbitrary, and the decision maker's discretion is not abused.

22. This, in his view, was not the case here. This is because the Bank wrongly concluded that the Head of the Team was Appellant's line manager during 2015. This constitutes a material manifest error. Moreover, in deciding that Appellant was not subject to an abuse of authority or any other unlawful behaviour during his 2015 performance appraisal exercise, MDHR took into consideration two irrelevant mitigating elements, such as (i) an upgrade of his overall performance rating from "*meets some expectations*" to "*meets expectations*" and (ii) Appellant's retrospective promotion, since these matters occurred only in July 2017, i.e. after he had initiated an administrative review process.

23. He continues by saying that MDHR, in determining that he had not been subject to an abuse of authority or any other unlawful behaviour during his 2015 performance appraisal,

wrongly ignored undisputed evidence in relation to the Head of the Team's intent and motivation, and consequences of such actions on him. He refers in this respect to events between end January and end April 2017 as described in the ARC report (*cf.* paragraph 15 *supra*). He alleges that the Head of the Team deliberately and intentionally influenced and distorted his performance evaluation. He alleges that the OCCO investigation was flawed and that the MDHR decision was based on a report that was not given to him, not even in a redacted form.

24. Third, he argues that the MDHR Decision, which affected him was taken on the basis of irrational OCCO findings and conclusions, which can be challenged and reviewed within the MDHR directed at him.

25. In a fourth argument, Appellant develops that the PARD failed to acknowledge the Bank's obligations to its staff members in investigating complaints in respect of behaviour to which they have been subject and which may constitute harassment, abuse of authority and cases of similar nature are not limited to an investigation being just prompt and thorough. He submits that in the circumstances of this appeal and pursuant to general principles established by international administrative tribunals, the Bank is also obligated to determine the facts objectively and in their overall context, to apply the law correctly and to observe the due process. Anyway, the investigation was in his view not thorough and not prompt.

26. Alternatively, Appellant submits that the absence of a mechanism for the processing of complaints of harassment, bullying, sexual harassment, abuse of authority or issues of similar nature over the treatment to which the staff members have been subject and have it investigated as a complaint in its own right and seek damages, violates both fundamental rights of the Bank's staff and general principles of international administrative law, particularly in the circumstances where the Bank's internal justice system is meant to be an effective substitute for external courts which EBRD employees are precluded from utilizing due to the Bank's immunity.

V. The Respondent's position

27. Respondent submits that it correctly discharged its obligations towards Appellant by

abiding to its internal law and conducting a prompt and thorough investigation in compliance with due process requirements as applicable.

28. It contends that the investigation was not only prompt, but also thorough. It disagrees with Appellant's claim that he "*was never interviewed by OCCO*" and that facts were "*inaccurately gathered*". It considers this claim misconceived since the Inquiry Officer had proposed to Appellant to answer in writing to specific questions "*so not to add to [the Appellant's] anxiety*" and that Appellant had not objected. It recalls that Appellant repeatedly stated in his appeal that the facts were clearly established and not challenged. In other words, Respondent and Appellant do not share the same interpretation of the facts and disagree on the final assessment made of the inappropriate behaviour. It adds that Appellant has not indicated which additional investigatory measure would have reinforced the "*thoroughness*" of the investigation.

29. Respondent further submits that the MDHR Decision was neither arbitrary nor based on a vitiated process or irrational OCCO findings. OCCO had concluded that the subject's alleged behaviour did not amount to misconduct and that a formal accusation of misconduct would not be warranted. MDHR's decision-making power under section 15 of the RWPs was thus logically limited to deciding whether no further action should be taken or whether some managerial action would be warranted. Improper interpersonal behaviour and management deficiencies that needed to be addressed were, however, identified. MDHR had no reason to consider the closure of the investigation by OCCO on the basis that no misconduct has occurred as irrational.

30. Respondent moreover observes that Appellant has been provided with all relevant information to defend his rights and challenge the investigative process and that there is no need for Respondent to disclose the requested documents, in particular the investigation report, to Appellant. It notes that the CDRPs provide for the general confidential treatment of information emanating from the investigative process, except on a need to know basis, and that, more specifically, under Section 18.01(b), the person who initially reported the suspected misconduct, or "complainant", is not entitled to review the investigative report. Disclosure of this document to the Staff Member process would also "*infringe on the rights of privacy or reputation of staff members of the Bank.*" It adds that its internal legal framework and practice are consistent with those of other international organisations, for example the United Nations,

the World Bank and the International Monetary Fund, which, even in the context of judicial proceedings, do not entitle complainants to receive copies of the investigative report. Administrative tribunals of these organisations have confirmed and upheld that a staff member who has alleged misconduct does not have a right to receive / see the investigative reports. They have recognised that the role of tribunals is to ensure that the organisation has discharged its obligations towards the complainants, namely to take adequate measures in response to their complaints with a view to ensuring that the complainants may carry out their duties in a working environment free from improper behaviour. In sum, the obligations of the organisation do not extend to granting the complainants an adversarial role in the punitive misconduct process, which they initiated, and as such they do not have a need to know the specific contents of the investigative reports.

31. With respect to the remedies sought, Respondent requests the Tribunal to refuse Appellant's request to quash the MDHR decision as arbitrary. Regarding Appellant's request that the Tribunal determine that he was subject to an abuse of authority and unfair / demeaning treatment, Respondent observes that the Tribunal is not in a position and does not have the authority to carry out a *de novo* investigation. As regards material and / or moral damages Respondent contends that Appellant has not met his burden of proof to substantiate the effects any faulty decision made on him. It requests the Tribunal to reject the Appeal in full.

VI. The Tribunal's evaluation

a. On the proceedings

32. Under Article 4 of the Directive on the Appeals Process (DIR/2019/14) the written procedure consists only of an appeal and a response. Appellant has on 28 November 2019 submitted unsolicited comments on Respondent's response. The Tribunal holds that this constitutes a violation of the written proceedings and decides that these comments shall not constitute part of the case file.

b. Request for Oral Hearing

33. Appellant requests an oral hearing pursuant to paragraph 7.02 of the Directive on the Appeals Process, which provides: “[i]n exceptional cases, the Tribunal may hold oral hearings to hear arguments of the parties or to re-hear the evidence (or part of the evidence) or to allow new evidence to be heard.”

34. Appellant requests an oral hearing in order to provide a witness testimony on the consequences and impact of the situation on Appellant, including on his medical condition which he submits is confirmed as work related / service incurred (and to provide medical reports for the Tribunal’s examination *in camera*). He adds that the matter has triggered several other related pending cases, either before the Tribunal or the ARC.

35. Respondent does not consider an oral hearing necessary.

36. It is not clear to the Tribunal what Appellant’s intentions are regarding an examination *in camera*. The Tribunal deems it, however, useful to recall that the proceedings before it are adversarial, which entails that all documents in the case file are equally accessible by both parties.

37. The Appeal does not make it convincingly clear why such documents or testimony, if relevant, could not be presented in the written procedure. The Appeal also does not convincingly establish the exceptional circumstances warranting an oral hearing, as required by paragraph 7.02. The Tribunal also fails to see the relevance to consolidate this case with other proceedings.

38. On the basis of the foregoing, the Tribunal does not deem it appropriate to hold an oral hearing.

c. Anonymity

39. Appellant, in light of what he considers highly confidential private information (including on medical issues) contained in his Appeal asks the Tribunal to grant full anonymity, that his name not be made public by the Tribunal, and that facts and dates that

may identify him are not mentioned or are redacted, so as to protect his privacy rights. He also refers to an earlier decision of the Tribunal and a pending case.

40. Respondent does not object to the request for anonymity.

41. The Tribunal recalls that it is inherent to an appeal process that certain facts and opinions become known, both inside and outside the Bank. This being said, it is the Tribunal's established approach to limit to the maximum extent possible the exposure of names of staff members concerned or of facts that may identify them. An absolute guarantee can, however, not be given.

42. As in EBRDAT Case 2019/01 the Tribunal grants full anonymity to the extent that confidential private medical information as well as Appellant's name will not be made public. On the other hand, the Tribunal cannot grant full anonymity on other information, facts or dates without sacrificing essential clarity.

43. Appellant also requests the Vice President responsible for Human Resources, pursuant to Section IV paragraph 9.03 (b), to consider exercising their authority and grant this request for anonymity in order to protect his private and professional life. The Tribunal finds that this matter is not within its remit.

d. Production of documents

44. Appellant asks the Tribunal to order the Bank to produce the following documents:

- The investigation report prepared by OCCO on 6 February 2018 and submitted to the MDHR, which formed the basis of the MDHR Decision;
- The HR assessment report prepared by the HR Principal responsible for RWPs on 16 August 2017 in relation to the Appellant's report to MDHR, which concluded that the Appellant might have been subject to an abuse of authority / unlawful behavior and made a recommendation to MDHR under the RWPs to refer the matter to OCCO; and
- The VSP recommendation note submitted by the Head of the Team to the senior management of the Bank, praising the Appellant and commenting on his technical skills and competencies (at a time when the Appellant's most recent 2015 performance rating was "*meets some expectations*" and the Appellant was rated as "*meets some expectations*" on all six technical skills and behavioral competencies).

45. Respondent recalls that the CDRPs provide for the general confidential treatment of

information emanating from the investigative process, except on a need to know basis. More specifically, under Section 18.01(b)55, the person who initially reported the suspected misconduct, or “complainant,” is not entitled to review the investigative report.

46. It adds that it cannot disclose these documents on grounds of their confidentiality, which aims to protect the interests of all staff members involved in the process and to maintain a harmonious working environment upon completion of any investigative and (if applicable) disciplinary process. Disclosing the investigation report would prejudice another staff member, i.e. the subject of the investigation and would infringe on the rights of privacy and reputation of staff members of the Bank. It submits that its internal legal framework and practice are consistent with those of a number other international organisations.

47. For these reasons, Respondent objects to the disclosure of the investigative report and of the HR Report. It attached in annex a statement from the inquiry officer, prepared in the context of the ARC proceedings and setting out the steps/process that were undertaken during the investigative process.

48. With respect to the disclosure of the recommendation made by the Head of the Team to the VSP panel, Respondent does not consider the disclosure of this confidential document as necessary to the present case. It added in this respect, that Appellant initiated in 2017 an administrative review process about the VSP decision, but decided not to pursue this process further so that this case is now closed.

49. Respondent does not make any request for the production of documents.

50. The Tribunal notes that Appellant has since the outset of the administrative review process repeatedly made the request for additional documents and invoked due process as a basis for his request.

51. The Tribunal observes that once an RARD is filed it is the responsibility of the ARC to conduct its proceedings. The ARC can receive documents, as it did in this case, and interview staff members as witnesses, which it also did. As long as MDHR is sufficiently clear in its decision as to why a finding of no misconduct was made and as long as the complainant/Appellant is able to propose witnesses to the ARC, it is not essential that the

investigative report be produced. The ARC can interview the same staff members who OCCO interviewed. Under such circumstances the complainant's due process rights in administrative review are preserved.

52. An appellant's due process rights are sufficiently protected if s/he is able to identify relevant witnesses and documents, and the ARC considers those witnesses and documents. The ARC can then decide whether an MDHR decision of no harassment was an abuse of managerial discretion and make appropriate recommendations.

53. The ARC process is to allow a hearing on the merits independent of the OCCO and, where necessary, to correct the latter's mistakes. The ARC conducted its proceedings as it deemed fit. Under these circumstances, there is thus no need to require production of the OCCO report and there was no denial of due process when Respondent declined to provide the OCCO report to the ARC.

54. The only exception to this would be when witnesses have become unavailable to testify to the ARC (*e.g.* deceased). In that situation the ARC should be able to request production of all or part of an OCCO investigative report or written witness statements taken by OCCO (subject to appropriate redactions). It is ultimately the responsibility of the Tribunal to determine whether the exception of "need to know" was properly invoked.

55. A staff member who is disappointed with the MDHR decision concerning his/her complaint of harassment should be accorded due process rights, although not to the same extent as the accused but nevertheless to the extent necessary to adequately pursue post-RARD proceedings. Those due process rights are protected if the ARC can see relevant documents and interview all relevant witnesses.

56. In the case before us, the ARC under its responsibility did not interview the Head of the Team and the line manager. Appellant did not complain about this in the Appeal. On the other hand, three other witnesses were interviewed and many documents were reviewed. Appellant has not established that he was unable to have relevant witness testimony and documents reviewed by the ARC or that he was prevented from having all of the facts of his case explored by the ARC or this Tribunal.

57. The Tribunal fails to see the relevance at this stage of the proceedings of the HR assessment report prepared by the HR Principal responsible for RWPs on 16 August 2017 in relation to the Appellant's report to MDHR. The facts show that the complaint was promptly processed and that an investigation followed.

58. Regarding the VSP recommendation note submitted by the Head of the Team to the senior management of the Bank, the Tribunal notes that the file shows that Appellant initiated in 2017 an administrative review process about the VSP decision, but decided not to pursue this process further. Appellant is thus estopped from raising this matter in the current proceedings; it also has, at best, marginal relevance.

59. The request for the production of additional documents is denied.

e. The merits

60. Article 3.03 ("Guiding principles") of the Directive on the Appeals Process provides:

...

(b) When the Administrative Decision complained of is a Decision of a Discretionary Nature, the Tribunal shall uphold the Appeal only if it finds that the decision was arbitrary, or discriminated in an improper manner against the Staff Member or the class of staff members to which the Staff Member belongs, or was carried out in violation of the applicable procedure.

(c) When the Administrative Decision complained of is not a Decision of a Discretionary Nature (including any Administrative Decision concerning harassment or bullying), the Tribunal shall uphold the Appeal only if it concludes that the decision was inconsistent with or not taken in accordance with the provisions of the Staff Member's Terms and Conditions of Employment in force immediately before the Administrative Decision was taken.

...

61. The Tribunal deems it appropriate to make some preliminary remarks.

62. As any employer, the Bank has an obligation to ensure a respectful workplace environment. As a corollary, Bank staff must in their dealings with colleagues show respect and tolerance for varied cultures, beliefs and backgrounds. They must avoid behaviour that constitutes harassment or bullying or that could be perceived by others as harassment or bullying (*cf.* EBRD Code of Conduct, Rule 2(d)).

63. It should be underlined that organisations have in general large discretion in setting up their internal laws and policies, as long as they respect general principles of international civil

service law. And although one may observe a convergence of the internal laws of most of the organisations, differences continue to exist. In fact, there is no higher norm obliging an organisation to harmonise its internal law with one or the other organisation.

64. Most public international organisations have now put a dedicated anti-harassment policy in place. As the file in the present case shows divergence does exist amongst major organisations on how to effectively deal with harassment issues, an area that is rapidly evolving, and in particular whether harassment complaints should be treated in a separate procedure or in the context of general investigative proceedings. It also shows that jurisprudence is far from uniform in the matter. In short, there is no single blueprint for dealing with these matters.

65. When dealing with harassment and similar cases, the Administration has a double duty of care, one regarding the complainant and the other regarding the alleged perpetrator. A claim of harassment and a report of misconduct based on an allegation of harassment are distinct and separate matters (*cf.* ILOAT Judgment 4207 (2020)). In fact two processes run almost in parallel and they are most of the time carried out during the same exercise, so a balance must be found respecting the rights, interests and privacy of one and the other.

66. The first process concerns the situation of the subject of the alleged improper behaviour. This involves two parties, the organization and the complainant. The latter has the right to expect that the complaint receives prompt attention and is followed up properly. S/he is also entitled to stay informed of the progress made during the inquiry and/or investigation and must be advised of the conclusions drawn by the Administration regarding the complaint.

67. The second process concerns the subject of the complaint, i.e. the staff member who allegedly behaved improperly. It is directed at the culpability of the staff member in question and potentially the imposition of a disciplinary measure. In this process, the two parties are the organization and the staff member in question. S/he is entitled to a fair inquiry and/or investigation and has due process rights when the investigation is followed by disciplinary proceedings. In this process, the complainant, a potential victim of the harassment, is a witness and not a party in the proceedings.

68. Although the complainant undoubtedly has an interest in the overall outcome of the case, s/he is not the subject of the investigation and is not the addressee of the decision regarding the alleged perpetrator. In other words, s/he is not the accuser or prosecutor.

69. During these processes the Organisation takes a number of discretionary decisions, for example, to determine whether misconduct may have occurred, call for an inquiry and/or investigation, initiate follow-up action and take a final decision regarding the subject. This is most of the time on the basis of a single investigation report, hence the need for a balance respecting the rights, interests and privacy of one and the other.

70. As said, these are discretionary decisions and the Tribunal's scope of review is limited to determining whether the discretionary powers were abused or not, i.e. whether the decisions have or have not been reached by the proper processes, or that the decisions either are or are not arbitrary, discriminatory, or improperly motivated, or that they could or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed. The Tribunal's role is not to substitute its views for managerial decisions properly taken.

71. As the Tribunal observed above, anti-harassment policies are evolving. Peer review committees may make recommendations for improvement or otherwise. The Directive on the Appeals Process, on the other hand, provides in Article 3.02 that in considering an Appeal the Tribunal shall base its decisions on the provisions of the Staff Member's contract of employment, the internal law of the Bank and generally recognised principles of international administrative law. In other words, the Tribunal applies the law as it stands, unless the law violates general principles.

72. The Bank issued its Harassment-free and Respectful Workplace Procedure (PRO/2019/17) ("RWP"). It provides for both initial and formal processes for the resolution of harassment issues. Under the formal process individuals subjected to alleged improper behaviour may report to MDHR, who will make a first assessment and may recommend a facilitated resolution, refer it for management action, or decide to close the matter. MDHR may also, if it is assessed that misconduct may have occurred, refer the matter for initial inquiry under the Conduct and Disciplinary Rules and Procedures (DIR/2019/12) (CDRPs). The inquiry is done by the Office of the Chief Compliance Officer and it consists of an initial inquiry phase and, if applicable, a formal investigation. MDHR must, within 15 working days

of receipt of the outcome of the investigative process, take one of the following courses of action towards the Bank Personnel who is subjected to improper behaviour and has reported it:

(i) advise that the allegations are still being dealt with under the CDRPs and that the Bank Personnel shall be notified in due course of the outcome under the CDRPs;

(ii) advise that the alleged improper behaviour was not tantamount to misconduct but has been referred for managerial action; or

(iii) advise that the allegations do not warrant any further action and the matter has been closed.

73. The RWPs add that Actions (ii) and (iii) above constitute an initial decision for the purposes of the Directive on the Administrative Review Process (DIR/2019/16). The staff member thus has the right to challenge the legality of this decision and the correctness of the proceedings followed. In order to be able to do so, s/he must be put in a position to fully understand the reasons for the decision and the procedure that was followed.

74. In the present case the procedure was correctly followed and Appellant was advised that the alleged improper behaviour was not tantamount to misconduct but had been referred for managerial action.

75. This is a very succinct decision and it did not adequately put Appellant in a position to fully understand the matter and to make a proper assessment of the facts and reasons underlying the decision. On the other hand, as was mentioned *supra*, Appellant had the possibility via the ARC procedure that witnesses were heard and documents reviewed. It is one of the purposes of the pre-litigation process to clarify matters and to establish the facts.

76. The Tribunal recalls that the recommendations and reports made by the ARC are not binding on the President. While the Head of an Organisation must give adequate reasons when deviating from recommendations given by a body set up to advise the organisation, there is no requirement that the reasons for disagreeing with the evaluation made in the recommendations present new arguments in addition to those that the organisation has already put forward.

77. And although it is true that the Appeal and the Response address in particular the question whether there was a prompt and thorough investigation and whether Appellant

should have access to the investigation report, the Tribunal will address the two issues that were at the core of the ARC report and were rejected in the PARD: (i) did the PARD breach Appellant's terms and conditions of employment when it did not accept the ARC Recommendation granting the amount of € 2,500 in respect of delay, and (ii) did the PARD breach Appellant's terms and conditions of employment when it did not accept the ARC Recommendation that Appellant be granted the amount of € 5,000 in respect of the Bank's failure to properly recognise Appellant's rights to have in place a procedure for the processing of his complaint that sits outside of the Conduct and Disciplinary Rules and Procedures?

78. It is, however, proper to, first of all, recall that the underlying claim, both in the RARD and in the Appeal, is that the MDHR decision was arbitrary and that Appellant was a victim of harassment. In his Appeal Appellant observes that the PARD failed to address his primary request that the administrative decision was unlawful, but that the substance of the PARD would suggest that the PARD confirms the initial administrative decision made on 27 February 2018. He also observes that the ARC did not make a recommendation on this point since it considered that there was no proper procedure in place under which individuals can raise a complaint over the treatment to which they have been subject and have it investigated as a stand-alone complaint as such. He repeats his claim that the 27 February 2018 decision was arbitrary, ignores the Bank's internal law and is tainted by an abuse of discretion as it was made on the basis of inaccurately gathered facts, took into consideration irrelevant factors and failed to take into account relevant ones.

79. This plea is thus before the Tribunal. It is not a new plea; it can be found in detail in the RARD and in the Appeal. The facts gathered by the ARC made it sufficient for it, and for the Tribunal, to reach a decision as to whether the MDHR conclusion of no harassment was consistent with Bank law. The fact that the ARC failed to do so and did not make a recommendation on this particular point (probably because it followed a different reasoning) or that the PARD did not address it either does not alter the Tribunal's duty to address it. Its jurisdiction is not limited to what is addressed in the PARD. The Tribunal is competent to consider an Appeal by a staff member against an administrative decision after having exhausted all appropriate channels for administrative review, which is the case here.

80. Appellant's claim essentially is that MDHR abused its discretion when it took the contested decision that no harassment had occurred because, in his view, harassment had

occurred and that the harassment, namely through abuse of authority, arose during and after his performance review for 2015, which caused him injury.

81. It was the ARC's mission in a case such as this to determine by its own exploration of documents and witnesses whether harassment occurred and therefore whether a finding of no harassment by MDHR was inconsistent with the Bank's law. The ARC recommendation, however, focused on the OCCO issues and failed to actually reach any conclusion as to the lawfulness of the MDHR decision. There is no finding in its report that Appellant was or was not a victim of harassment. This Tribunal must now apply Bank law on harassment to make an independent assessment, based on the facts already found by the ARC, and determine whether MDHR's interpretation of the harassment rules was erroneous or if it in some other fashion abused its discretion.

82. Annex 13.1 of the Staff Handbook lays down the Bank's Code of Conduct. It is completed with a number of Guidance Notes. Rule 2(d) of the Code provides that Bank staff must avoid behaviour that constitutes harassment or bullying or that could be perceived by others as harassment or bullying.

83. The first Guidance Note concerns Rule 2. The second part of the note covers Harassment, Sexual Harassment, Bullying and Abuse of Authority. It defines "abuse of authority" as:

...the improper use by Bank Personnel of his/her Bank position of influence, power or authority by Bank Personnel against other Bank Personnel or CTCs. Abuse of Authority may occur...by unreasonably impeding the ability of other Bank Personnel or CTCs to work effectively. It may also arise where there is an improper use of influence, power or authority to arbitrarily influence the career or employment conditions (including, without limitation, the giving or with-holding salary increase, performance based compensation, promotion, or recommendations in respect of any thereof) of another Bank Personnel or CTCs.

84. The ARC report (*cf.* paragraph 16 *supra*) shows that on 27 January 2016 an additional appraisal meeting took place in which not only the line manager, but also the Head of the Team participated. The Head of the Team was not Appellant's line manager, but the Team Director. In that meeting the Head of the Team told Appellant that he considered his performance to be poor and that he would be rated as "meets some expectations". He stated that this was in the "bottom 10% of all staff".

85. In a subsequent meeting the line manager confirmed that Appellant had been placed in the bottom 10% of all banking staff and that any concerns with regard to his appraisal and rating should be raised with the Head of the Team. He was a few days later informed that following calibration he was in the bottom 15-20%.

86. On 2 February 2016 Appellant made it clear that he did not agree with the appraisal outcome and asked to meet to discuss the matter. He was told that this was how the managers assessed and perceived his work, and that the overall rating of “meets some expectations” and the individual ratings would not be changed but that some comments would be altered. He refused to sign the 2015 performance evaluation.

87. A year later the Bank introduced a voluntary departure scheme (VSP), to which Appellant applied. End March 2017 Appellant was notified that his application was not accepted as he had a “critical individual skills contribution.”

88. On 25 April 2017 the Staff Member met with HR and the Head of the Team to discuss the situation. The Head of the Team explained that the 2015 performance appraisal had been assigned to Appellant “by mistake” based upon a number of non-performance related factors such as administrative and budgetary factors, but mainly because he was in a TC externally funded position and on a different “not his” budget. He added that he considered Appellant to be a good banker. Appellant highlighted the effect that the incorrect rating had upon him.

89. On 3 July 2017 the HRBP informed Appellant that “it appears plausible that your 2015 performance appraisal has not been fully accurate”.

90. On 17 July 2017 the Staff Member lodged his complaint under the RWP. The complaint indicated that in light of the disclosures made following the VSP application, in the meeting with the Head of the Team, and the latter’s admission that the 2015 annual appraisal grading had been an error, this conduct in 2015 amounted to an abuse of authority and harassment. He submitted that all actions of the Head of the Team had improper motives as the latter had deliberately or intentionally distorted the 2015 performance appraisal and unreasonably impeded the Staff Member’s ability to work effectively.

91. On 20 July 2017 the Staff Member was informed that his 2015 overall performance

rating had been changed to “meets expectations” but that the comments and individual ratings were un-amended.

92. The Tribunal concludes from this that the Head of the Team involved himself directly in the appraisal exercise and influenced the rating. The Tribunal holds that this amounts to abuse of authority as defined by the Bank (*cf.* paragraph 83 *supra*).

93. It follows from this that MDHR’s decision that the alleged improper behaviour was not tantamount to misconduct was itself an abuse of discretion because it ignored or misinterpreted the above definition and thus the Bank’s law.

94. In addition, it took the Bank a year and a half to only partly correct the performance rating. The record further shows that Appellant has suffered stress throughout this period and still does. He was caused harm and must be compensated for this.

95. The Tribunal will now address the two issues that were at the core of the ARC report and were rejected in the PARD.

(i) *Excessive delays ?*

96. The ARC, which itself took ten and a half months to issue its report, concludes that the six month period between the lodging of the complaint and the passing of the Chief Compliance Officer conclusion to the Managing Director Human Resource did not meet the requirement that international organisations investigate allegations promptly. It observed that the complaint was lodged in July 2017, and that it was not until mid-September that the Staff Member was advised that OCCO was progressing an investigation. The ARC did not find that period to amount to a material delay recognising that people would have been on their annual summer holidays. However, it saw no explanation for the Bank for the delay between the middle of September, when the staff member was advised that the Head of the Team would be contacted, to 27 November when he was apparently contacted. It also saw no explanation for the two-month delay between the interview of the Head of the Team and the compiling of the report. It found the delay excessive and recommended compensation.

97. In his Appeal, Appellant refers to one of the ARC's conclusions that "*Appellant's complaint was not progressed sufficiently promptly.*" He further contends that the OCCO investigation, which was at the basis of MDHR's decision was not thorough, in particular where the investigate body failed to establish accurately the identity of his line manager during 2015. This led MDHR to take a manifestly erroneous factor into consideration.

98. The PARD held that during the six months under consideration the Bank took all the steps required by its internal law (including an assessment by MDHR under the RWP, an Initial Inquiry and a Formal Investigation by OCCO) and acted in compliance with international standards resulting from the practice of other international organisations and the jurisprudence of international administrative tribunals.

99. Respondent gives details of the pertinent timelines as follows:

- the HR assessment under the RWPs was conducted between 17 July and 17 August 2017, date of the referral of the case to the CCO for investigation under the CDRPs (on 16 August 2017; the Appellant got informed by the HR Principal about this upcoming referral);
- After the matter was referred to OCCO on 17 August 2017:
 - the CCO appointed the Inquiry Officer;
 - the Appellant was contacted by the Inquiry Officer. The Inquiry Officer and the Appellant subsequently exchanged e-mails (in which the latter mentioned that it was "*not [his] intention by any means to escalate the matter to OCCO*";
 - after answering to a series of investigative questions from the Inquiry Officer, the Appellant was informed that the Head of the Team would be contacted;
 - the Inquiry Officer communicated the *Notice of conduct of a Formal Investigation* to the Head of the Team on 27 November 2017;
 - the Head of the Team was interviewed on 28 November 2017; and
 - the Investigative Report was issued on 31 January 2018.

100. Regarding the thoroughness of the investigation Respondent rebuts Appellant's claim that he "*was never interviewed by OCCO*" and that the facts were thus "*inaccurately gathered*". It submits that this claim is misconceived as the Inquiry Officer proposed to Appellant to answer in writing to specific questions "*so not to add to [the Appellant's] anxiety and Appellant had not objected.*"

101. The Tribunal does not share the ARC's conclusion that the delays were excessive and that Appellant must be compensated. Initial Inquiry and the Formal Investigation were carried out in parallel with other investigations and within the constraints of available resources. The

total length of the present exercise is not unreasonable, even if, ideally, it could have been somewhat shorter. But this does not render the duration excessive and certainly not in breach of the Appellant's Terms and Conditions of Employment. The PARD is therefore upheld on this point.

(ii) *“Failure to have in place a separate procedure for processing harassment complaints” ?*

102. The PARD also rejected the second recommendation that Appellant be granted the amount of € 5,000 in respect of the Bank's *“failure to properly recognise Appellant's rights to have in place a procedure for the processing of his complaint that sits outside of the Conduct and Disciplinary Rules and Procedures (CDRPs)”*. The ARC considers that persons in this situation should be given the possibility to challenge the outcome of the OCCO investigation and that, to this end, they should be provided with more information and with, at least a redacted version of, the investigative report. The PARD rejected this recommendation since it considers that the Bank complied with its internal law, since Article 18.01 of the CDRPs provides that *“the person who initially reported the suspected misconduct [...] shall not be entitled to review the Investigative Report”* as well as with the practice of peers and case law of certain international administrative tribunals.

103. In this context Appellant disagrees with the ARC. He contends that the ARC erred in law submitting that it is irrelevant whether or not OCCO findings and conclusions are admissible as distinct decisions and whether or not a staff member can challenge them separately. He submits that they are fully reviewable within the MDHR Decision to determine on its lawfulness because the MDHR Decision (which the Appellant has standing to challenge) is made on the basis of these findings.

104. Respondent recalls that this matter was already the subject of an inadmissibility decision adopted by the President on 10 August 2018 by which Appellant was informed that the conclusion of the Chief Compliance Officer that the Head of the Team's behaviour was not tantamount to misconduct is not an administrative decision that allegedly alters, in an adverse manner, or allegedly is in breach of, the terms and conditions of Appellant's employment. It added that Appellant did not appeal the President's decision of 10 August 2018 and that an appeal on this point is time-barred.

105. The Tribunal agrees that OCCO's conclusions and recommendations do not constitute distinct administrative decisions that can be challenged before it by the initial complainant. Appellant can only challenge the legality of the process followed and the decision of MDHR informing him about its conclusions concerning the complaint.

106. It is settled jurisprudence that when an official makes allegations of harassment, s/he is entitled to have them dealt with in accordance with the rules and procedures in force (*cf.* ILOAT Judgment 3365 (2014), under 26). This is what has happened in the case under consideration. Appellant lodged a complaint in accordance with the existing procedures and the sequence of events shows that the Bank promptly addressed Applicant's allegations of misconduct by opening an investigation, which was conducted within a reasonable period.

107. Appellant was informed of the outcome of the investigation, i.e. that the actions he complained of were not tantamount to misconduct. The Bank did apply its internal law and concluded that the alleged conduct was not tantamount to misconduct. Appellant was regularly informed of the progress made in the inquiry and investigation. He was further informed that neither OCCO nor HR had made a determination that what had happened in his situation was an appropriate behaviour. The conduct was, in fact, considered inappropriate and it was being addressed: the performance assessment was amended, Appellant was reassigned, and, as far as the subject of the investigation is concerned, the matter was referred for managerial action. Appellant complains that some of these measures occurred only in July 2017, i.e. after he had initiated the administrative review process.

108. The Tribunal has, however, found (*cf.* paragraphs 92 to 94 *supra*) that there was abuse of authority under the Bank's internal law and that, as a consequence, MDRH's decision was an abuse of its discretion.

109. The ARC held that the Bank should have a procedure in place for harassment investigations that sits outside the framework of the CDRPs and that Appellant has a right to have this in place. The Tribunal, first of all, repeats that it must apply the law as it stands. The procedures in place, which are very similar to those of many other international organisations, were properly followed and Appellant was not deprived of any right to challenge the outcome:

the matter was subject to administrative review, and it was considered by the ARC and by this Tribunal.

110. The Appeal and the ARC have, however, failed to identify a higher norm, which would form the legal basis for such a specific procedure, and which would require that this must be in place and that Appellant, or any staff member for that matter, has a subjective right thereto. It has also not been established in how far such a different process would have resulted in a different outcome for Appellant. The ARC has thus erred in law in this respect. Moreover, the Tribunal cannot help but conclude that the damages that the ARC recommends to grant “*for the failure to properly recognise Appellant’s rights to have a different procedure in place*” constitute punitive or exemplary damages. The Tribunal finds no legal basis for this and deems it inappropriate in the present case. The PARD must thus be upheld on this point.

111. To sum up, the Tribunal has concluded that Appellant was the subject of abuse of authority, that harm was done and that he must be compensated for this. Because the record before us has insufficient information at this juncture to allow the Tribunal to quantify damages, the parties are directed to meet to determine whether they can agree on an appropriate amount of compensation. In the event the parties are unable to agree, they each should submit to the Tribunal an explanation of an amount they consider appropriate.

VII. Costs

112. Appellant requests the Tribunal to award reasonable expenses and legal costs. Appellant not being represented, no reimbursement of costs is due.

VIII. Decision

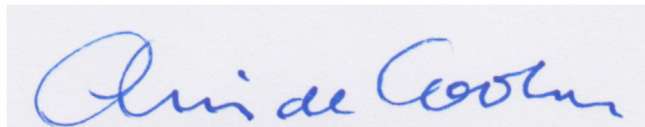
113. The Administrative Tribunal decides:

1. Appellant was the subject of abuse of authority and has suffered harm. The parties are directed to meet to determine whether they can agree on an appropriate amount

of compensation. In the event the parties are unable to agree, they each should submit to the Tribunal an explanation of an amount they consider appropriate.

2. All other claims are dismissed.

18 February 2020
For the Administrative Tribunal



Chris de Cooker
Chair of the Panel