

EUROPEAN CENTRE FOR MEDIUM-RANGE WEATHER FORECASTS

APPEALS BOARD

DECISION OF 13 June 2025

IN CASE NO 18

X vs. ECMWF

The Appeals Board of the European Centre for Medium-Range Weather Forecasts,

Composed of

Michael Groepper,
Kieran Bradley,
Spyridon Flogaitis,
Eva Gröniger-Voss,
Hélène Ruiz-Fabri,

Assisted by Susan Madry, Secretary of the Appeals Board,

Having heard in public session in Bonn on 1 April 2025

The Claimant: X, assisted by M^e Bertrand Repolt, lawyer,

The Respondent: the European Centre for Medium-Range Weather Forecasts (hereinafter referred to as ECMWF or Centre), represented by Laszlo Ziegler, and assisted by M^e Bertrand Wägenbaur, lawyer,

and having considered¹

- The Claimant's appeal of 5 August 2024, with Annexes 1-17,
- The Respondent's Comments of 13 September 2024, with annexes B.0 – B.8 and including annexes B.3-10 – B.3-21,
- The Claimant's Reply of 24 October 2024, with 26 Annexes, replaced by the Claimant's Reply of 28 October 2024, with 27 Annexes,
- The Respondent's Rejoinder of 25 November 2024,

Has delivered the following decision:

- ¹ This appeal is directed against the Director-General's decision of 19 April 2024 imposing a disciplinary sanction on the Claimant.

¹ The Appeals Board has decided not to request any documents after the hearing and not to take into account any documents sent by the parties after the hearing.

I. Facts

- 2 The Claimant started working at the Centre in 2018 and is employed as a scientist, level A2, in the Centre's Copernicus Atmosphere Monitoring Service. His working place is in Bonn, Germany.
- 3 On 4, 5 and 7 November 2023, the Claimant sent e-mails to all staff asking them to sign a letter he had co-authored in response to the events following the attack of 7 October 2023 by Hamas against Israel. The e-mail of 4 November 2023, entitled "*Letter to Director-General regarding the situation in the Middle East*" had the following wording:

"Dear colleagues,

Inspired by the recently-demonstrated Centre leadership in response to the war in Ukraine, ECMWF employees have decided to collect signatures for a letter to support an action from our Director-General in requesting a similar extraordinary meeting of the Council regarding the current events in Israel and Palestine and the resulting extreme humanitarian crisis. Our initiative stems from the failure to comply, by one of our co-operating states, with international law and in particular the recently adopted United Nations General Assembly resolution demanding an immediate humanitarian ceasefire in Gaza. As stated in our letter, we support the Centre for displaying consistency in upholding international law, especially when one of its co-operating or member states is involved.

Please follow this link to the document (plain text file). All Staff members supporting our request are invited to sign it by adding their name ... An updated PDF version will be produced everyday as signatures are added to the plain text file. The document will be available online for signature until next Wednesday 1200 (GMT) for submission to the Director-General on Thursday morning."

- 4 The document which the Claimant invited his colleagues to sign ("the draft petition") had the following wording:

"Subject: Letter of Support for an Extraordinary Council Meeting Regarding the Situation in Gaza

Dear Director-General,

We, the undersigned employees of ECMWF, are writing to express our deep concern and sadness regarding the ongoing tragic events devastating the lives of thousands of civilians in Gaza and earlier in Israel.

Last week, the United Nations General Assembly passed a resolution calling for an immediate humanitarian ceasefire in Gaza. We are distressed to note that Israel, a co-operating state of ECMWF, has not adhered to this United Nations resolution. Furthermore, official UN reports have recently highlighted grave violations of human rights and humanitarian law by Israel in Gaza. We expect that all ECMWF member and co-operating states

respect and protect those universal principles enshrined in international agreements and conventions.

Our appeal aims at expressing our deep concerns regarding Israel's refusal to abide by the United Nations General Assembly decision and the resulting extreme humanitarian crisis. Therefore, we would strongly support you in calling for an extraordinary Council meeting of the ECMWF Member States. Similarly to the procedure followed by the Centre in response to Russia's invasion of Ukraine in 2022, the objective of this meeting would be to examine what actions the Centre can adopt to promote respect of international human rights and humanitarian law by member and co-operating States, in accordance with the Centre's values and principles.

We firmly believe that ECMWF, as an international organisation, must commit to upholding international human rights and humanitarian law, even as it fulfils its mandate in the realm of weather forecasting and climatology. Ignoring such critical issues would risk compromising the moral and ethical standing of our esteemed institution.

Thank you for your prompt attention to this grave and urgent matter. We look forward to your timely response to our request.

Sincerely,

Signatories"

- 5 In reply to this, the Director-General sent all staff an e-mail dated 6 November 2023 reading:

"Dear all,

I would like to respond to an email which seems to have been sent to all staff over the weekend, on two key aspects.

First, it is important to stress that ECMWF is a non-political organisation, accountable to its Member States. In the case mentioned in the letter of the war between Russia and Ukraine, both the EU and most of our Member States had imposed sanctions on Russia which had an impact on our activities, namely some contracts linked to the provision of data. With the President of Council, we suggested that an extraordinary session of Council should be convened as we needed guidance from the Member States on the exact application of such sanctions to our own activities, which is what we received.

To this day and to my knowledge, neither our Member States nor the EU have imposed such sanctions in the current case.

I also want to take this opportunity to remind you that ECMWF staff, like all international civil servants, should refrain from bringing their political convictions or personal views to work.

Yours sincerely

Florence”

- 6 On 7 November 2023, the Claimant and his colleague Y co-signed another e-mail to all staff reading:

“Dear colleagues,

Following the Director-General's email yesterday, it appears there may have been some misunderstanding after our initial message. Therefore, we would like to clarify a few important points:

- The decisions emanating from international organisations, such as the recent resolution of the UN General Assembly demanding a ceasefire in Gaza, are neither personal views nor political opinions. Our initiative concerns ensuring the respect of international conventions and laws by one of our co-operating states.*
- Civil servants have the right to voice their concerns about the ethical implication of their work, which we believe is particularly relevant in the current situation, as described in the letter. It is understood that it is then up to the Director-General and member states to take our initiative further or not.*
- We note that 10 out of 23 ECMWF member states voted for the UN General Assembly resolution on a ceasefire in Gaza, while only 2 voted against. This emphasises the growing concern among a significant number of our member states about the catastrophic humanitarian situation over there.*

As of Monday afternoon, we had already collected about 75 signatures from Staff members. This is a great start and demonstrates the interest of our colleagues in this initiative. In light of our remarks above, we will continue to collect signatures until Thursday for submission to the Director-General on Friday morning. We would like to encourage everyone willing to express their concerns regarding the ethical dimension of our work at ECMWF to sign the letter.

Y and X”

- 7 On 8 November 2023, the Director-General sent a second e-mail to all staff with the following wording:

“Dear colleagues,

It has come to my attention that two staff members sent at least one additional email to a significant portion of staff members seeking yet again to garner support to an open letter to me. I am disappointed that my previous message to all staff on this very matter was not sufficiently clear. I regard such usage of the Centre's IT resources not to be in line with ECMWF rules and regulations. The Centre will assess if further reactions are warranted under its applicable rules and regulations as well as International Civil Service law.

Both emails have led to significant distraction from our work effort and to an unknown number of side discussions entirely unrelated to ECMWF's goals and objectives. I would like to reiterate that ECMWF staff, like all international civil servants, are expected to refrain from bringing their political convictions or personal views to work. Doing so does not foster a work environment that is conducive to advancing ECMWF's mission and objectives.

I therefore urge all of you once again to stop using the Centre's IT resources to advance your personal understanding of international politics and law, especially if they are unrelated to ECMWF's mission and objectives and unrelated to your personal work duties as an ECMWF staff member.

I very much hope that we can all return to our actual work now.

Regards

Florence”.

- 8 Following this e-mail, some of the 75 signatories who had signed the draft petition withdrew their signature. The petition was not sent to the Director-General.
- 9 On 23 November 2023, the Claimant was informed that he was under investigation since his activities might have amounted to misconduct.
- 10 On 19 April 2024, following an investigation and a hearing before the Disciplinary Board which took place on 20 February 2024 and based on the Board's report of 22 March 2024 which found the Claimant guilty of misconduct and proposed, by majority opinion, the adoption of “at least a Written Censure”, the Director-General decided to impose a “Written Censure” against the Claimant. The opening paragraphs of the Decision read as follows:

“In accordance with Article 37 (1) of the Staff Regulations, following a thorough evaluation of the facts established during the process, and taking due account of aggravating and exculpatory or mitigating circumstances, it is concluded beyond reasonable doubt that you are “guilty of misconduct in the course of duty or otherwise” and the following disciplinary measure is deemed proportionate and thereby taken against you:

WRITTEN CENSURE

You are expected to cease immediately and never repeat any activities such as those that have given rise to the disciplinary measure or to engage in any similar activity during the course of your employment with ECMWF.

If you choose to ignore this disciplinary measure or engage in any other misconduct, further disciplinary measures, including dismissal, may be considered in accordance with Article 37 (3) of the Staff Regulations. ...”

11 In the following eight pages, the Director-General explained that, as a result of the investigation and disciplinary procedure, it had been concluded that the Claimant had infringed a number of rules, regulations and policies and that the disciplinary measure was motivated by the following reasons, namely: violation of the duty of loyalty to the Centre; insubordination with respect to the Director-General's instructions and authority; failure to avoid a conflict of interest by allowing private interests to interfere with the performance of official duties; misuse of the internal e-mail resources; illegitimate processing of "personal identifiable information" by collecting and selecting staff members' e-mail addresses and by sending them e-mails; breach of staff instruction on the use of ECMWF e-mail lists.

12 This is the contested decision.

13 On 3 May 2024, the Claimant asked the Director-General to withdraw her decision. However, by letter of 17 May 2024, the Director-General informed the Claimant that she would uphold her decision. On 5 August 2024, the Claimant lodged the present appeal.

II. The Claimant's Position

14 The Claimant argues that the disciplinary sanction is discriminatory and violates his right to freedom of expression and respect for private life. He contests being guilty of the breaches set out in the contested decision. The Centre has failed to prove the allegations of misconduct against the Claimant to the applicable standard of proof, that is, beyond reasonable doubt.

15 The Director-General did not have the right to prevent the staff from collecting signatures for a petition that merely "supported" her in organising a Council meeting (i.e., not imposing anything on her) to discuss concerns raised by several staff members about a co-operating state's non-respect of international law.

16 The precedent of the extraordinary ECMWF Council meeting imposing sanctions on Russia and Belarus over Russia's invasion of Ukraine should be kept in mind.

17 Nothing in the petition wording allows the Centre to say that the Claimant tried to "force" or "pressure" the Director-General to take an initiative that is outside of her competences. Stating otherwise is simply dishonest and can only be seen as a desperate attempt to undermine the staff members' right to freedom of speech (guaranteed by the European Convention on Human Rights – ECHR). The terms of the petition were perfectly within the bounds of free speech.

18 Instead of reading the terms of the petition itself, the Claimant's "state of mind" and "heart" were scrutinized without any connection to the petition itself. The investigators found that he had started doing activism for the Palestinian cause in 2008 and seemed to be guided by deeply rooted personal motivations. Worse still, the Director-General relied on the exchanges that took place between the Claimant and the Staff Committee, thereby seriously compromising the right of free expression and confidentiality that a staff member should enjoy when contacting the Staff Committee.

- 19 The case law of the European Court of Human Rights – ECtHR – prohibits any sanction taken against an employee or civil servant because of their real or supposed political opinion. On the contrary, states that are party to the ECHR and are members of an international organisation operating on their territory must offer "equivalent protection" in terms of human rights to that which these same member states must guarantee under the ECHR. The Centre's members include states parties to the ECHR.
- 20 The Centre must protect and guarantee all its staff members, particularly the Claimant, the freedom of expression and respect for his private and family life, including in the workplace.
- 21 The disciplinary proceedings initiated against the Claimant are based on a clear and express intention to punish him because of his alleged political opinions, which constitutes discrimination prohibited by the ECHR. If the freedom of expression could only be exercised with words that were acceptable to the person to whom they were directed, or words "in line" with the opinion or instructions of the person to whom they were addressed, then this freedom would not be a freedom at all. The freedom of expression is also guaranteed in the workplace. Contrary to this, the Director-General considers civil servants should act like robots, exclusively dedicated to their mission, without any regard to personal convictions, ethics and conscience.
- 22 The discriminatory nature of the sanction imposed on the Claimant is further established by the disciplinary sanction being more severe than that imposed on the petition's co-author Y. No objective reason can justify such unequal treatment. .
- 23 The Staff Regulations do not contain any provision prohibiting the Centre from imposing restrictions on the rights of individuals and on individual and collective freedoms that would not be justified by the nature of the task to be performed nor proportionate to the aim pursued. For example, Article L. 11-121 of the French Labour Code prohibits such restrictions.
- 24 While this case clearly questions the place of free speech within an international organisation such as the Centre, the Director-General and the Disciplinary Board preferred to approach it from the angle of insubordination, conflict of interest and the rules governing the use of professional e-mails. In so doing, they have completely missed the case's main issue.
- 25 In the present case, the Claimant could only be punished for abusing his freedom of expression. The Director-General's memorandum was totally silent on this subject. It also fails to
- State how the Claimant abused his freedom of expression;
 - Explain how the proposed sanctions would be proportionate to the aim pursued, and to specify that legitimate aim;
 - Explain how the petition and the preceding exchanges were detrimental to the Centre.
- 26 Concern for the respect and application of a UN General Assembly's resolution, once it has been adopted, is a legal matter. The purpose and effect of the ex-

changes and the petition was to call for respect for international law, which unquestionably falls within the scope of the professional missions of the Centre's agents and, in particular, of the Claimant. The Claimant expressed himself cautiously: the exchanges and the petition do not contain any abusive, defamatory or excessive comments. The petition was circulated to staff members within the Centre. It was not circulated externally.

- 27 The Appeals Board should know that any sanction adopted by the Director-General against the Claimant would violate the ECHR provisions and likely engage Germany's international responsibility.
- 28 The petition was a collective initiative. There was never any question of the Claimant acting in a personal capacity. Each signatory would share equal responsibility for any pressure exerted on the Director-General by endorsing the petition's content. Singling out one staff member and holding him solely responsible for a petition, under the pretext that he was among the first to discuss and organise it, is clearly unacceptable and discriminatory. The sanctions imposed on the Claimant can best be interpreted as an attempt to set an example and intimidate the staff, discouraging them from undertaking similar initiatives in the future.
- 29 There was a clear violation of the right to respect for private and family life. The discussions that took place between staff members via MS TEAMS or by e-mails had the purpose or effect of exchanging personal political opinions. These were private exchanges which the Centre was not allowed to collect and analyse in support of the disciplinary proceedings against him. An employee or civil servant remains a citizen, with a private life, even in the workplace. Moreover, this practice is perfectly tolerated within the Centre where private use of e-mail and processing of Personally Identifiable Information (PII) is recurrent and generally accepted at the Centre and has never been the object of investigations nor sanctions by the Direction.
- 30 To protect the Staff Committee, it is essential that the exchanges that take place between them and the staff members remain confidential and that the employer cannot access them.
- 31 The Claimant rejects being liable of the breaches for which he is sanctioned.
- 32 Firstly, he has not violated his duty of loyalty. The petition's content, purpose and effect show that the Claimant and all those who collaborated in this collective initiative had in mind respect for the values and principles defended by the Centre. Israel was very likely to use the Centre's infrastructure and/or meteorological data as part of its military campaign, in violation of international law and, in particular, of the resolution adopted by the United Nations' General Assembly. Therefore, the Claimant was perfectly entitled, as an official of the Centre, in the exercise of his professional duties, to express concern about the Centre's collaboration with Israel. The Claimant did not exert any pressure on his colleagues. On the contrary, he was very respectful of everyone's opinions, helping draft and improve the petition, with other colleagues, based on everyone's inputs and suggestions.
- 33 Secondly, the Claimant is not guilty of insubordination. He is sanctioned for having defied the authority of the Director-General, who had instructed him to refrain

from expressing personal political convictions at work. This instruction was unlawful. The guarantees offered by the ECHR prohibit the Director-General of an international organisation from muzzling its officials.

- 34 Only the Director-General's second e-mail explicitly mentioned the possibility that some articles of the Staff Regulations had been infringed through undue use of IT resources for the petition initiative. At this point, the Claimant and one of his colleagues immediately decided to take the petition offline. Thus, the Claimant respected the Director-General's authority. Moreover, the petition with the existing 75 signatures was never sent to the Director-General. Therefore, the Director-General's demands were accepted and followed up on, which is the opposite of insubordination.
- 35 Thirdly, the Claimant is sanctioned for having acted in a situation of conflict of interests. However, there was no conflict of interests. Creating, discussing and circulating a petition did not improperly influence the performance of the Claimant's duty. He also did not gain personally by doing so.
- 36 Fourthly, the Claimant is accused of violating the policy on acceptable uses of electronic communication. However, there was no abuse of IT resources. The messages and petition fully aligned with the Centre's objectives, values and principles. Using electronic communication for things unrelated to the Centre's aims and objectives is accepted in practice, and no one has ever been sanctioned for such use.
- 37 Fifthly, the Claimant is accused of failing to comply with the personal data protection policy by collecting and using staff members' e-mail addresses. Again, others routinely do this without any warning or sanction.
- 38 As to compensation, the Claimant submits that the disciplinary proceedings and the Written Censure implemented against him were the source of considerable and undisputable stress and anxiety, which impacted his state of health and well-being and damaged his professional reputation within the Centre.
- 39 He spent many hours during his week-ends and holidays to work on the response to the Director-General's two memorandums and to prepare for the Disciplinary Board hearing. He is therefore entitled to ask the Appeals Board not only to annul the decisions but also to order the Centre to pay him damages of 40,000 Euros to compensate for the damage suffered.

III. The Respondent's Position

- 40 The Claimant's attempt to present the contested disciplinary measure as a "sanction" taken because of his "political opinion" is beside the point. The Written Censure was imposed because the Respondent breached a number of his statutory obligations as a staff member. The Claimant erroneously argues that his freedom of expression and other fundamental rights – the existence of which nobody contests – amount to some sort of justification if not "moral obligation" to disregard his statutory obligations.

- 41 The Claimant's argument that the Director-General had "*a clear and express intention to punish him*" and constituted "*discrimination*", is manifestly unfounded. The merits of whatever the Claimant's views are, i.e. whether or not they are political, altruistic, humanistic etc., were not the subject-matter of the disciplinary proceedings.
- 42 The petition co-authored by the Claimant was designed to force the Director-General, by way of what amounts to a *fait accompli* dressed up as a "collective" initiative to give it more weight, to act outside of the Centre's mission and, by the same token, outside the Director-General's mission and competency.
- 43 While several staff members eventually withdrew their signatures from the petition, their decision did not result from "*censorship*". Neither the Director-General nor anybody else ever asked them to remove their signatures; the Director-General had merely asked the Claimant to stop disseminating his call for signature of the petition at the ECMWF. Nobody whose only involvement in this matter was signing the petition was even investigated, much less reprimanded. Whether the petition resulted from a "*collective*" or an individual initiative is irrelevant. No staff member has been sanctioned for "membership" of what the Claimant tries to portray as a collective effort.
- 44 It is not for the Claimant nor any other ECMWF staff member to pressure the Director-General, let alone in front of all staff members, to convene "*an extraordinary Council meeting of the Centre's member states*", specifically if that is done for reasons which are entirely – and obviously – unrelated to the Centre's missions. Neither the Centre nor its staff members are called upon to discuss adherence to international humanitarian law with the ECMWF Member States. What matters for launching disciplinary proceedings is that the Claimant was determined, regardless of the Director-General's instructions, to continue confronting her with a petition on a subject evidently unrelated to the Centre's activity and to the Director-General's competences vis-à-vis the Member States.
- 45 The Claimant's attempt to present the Director-General's reaction regarding the Russian armed aggression against Ukraine as a sort of precedent is manifestly unfounded: in the case of Russia it was the President who had convened the Member States; the Director-General had previously requested guidance in light of the sanctions put in place against Russia, which, among other things, makes it impossible for ECMWF to send or accept payment to and from Russia. Moreover, neither Russia nor Belarus are Member States or Co-operating States of ECMWF.
- 46 The Claimant's view that the Director-General would expect staff members to "*act like robots*" is a grotesque distortion of reality. In reality, hierarchies at ECMWF are flat and the possibility of direct access to the Director-General to discuss even personal issues reflects a noticeable and much-welcomed difference between the Centre and other inter-governmental organisations.
- 47 The Claimant repeatedly decided to ignore the instruction the Director-General had given him, which amounts to insubordination.

- 48 With regard to the Claimant's reference to ILO Convention 135 and the protection it confers on workers' representatives against any act prejudicial to them, a member of staff has no individual and legitimate interest to argue that rights would have been infringed which are not his own rights. This is the case here since the Claimant is not a staff representative. Moreover, not only did the Centre's Staff Committee itself not complain about an infringement of said ILO Convention, but it also clearly declined the Claimant's request that the Staff Committee should support his petition, while in fact warning him to abstain from pursuing it. The Claimant's initiative to put pressure on the Staff Committee is not covered by the freedom of association.
- 49 The Centre is not judging the Claimant's personal reasons or assessing the political or other value or relevance of his initiative but sanctioning him to put pressure on the Director-General to undertake an initiative that is outside of her competences.
- 50 The Claimant misused the Centre's e-mail to breach his duty of loyalty and defy the Director-General's authority. The purpose of the professional e-mail is obviously not to be used for such breaches.
- 51 Regarding the financial claim, the Claimant has neither established a violation of his rights nor of the Centre's obligations towards him. Accordingly, there can be no basis whatsoever for any financial compensation. Besides, the Claimant does not substantiate his alleged suffering in any way. He cannot validly claim that the disciplinary procedure would have caused him stress and moral prejudice, since it is merely the consequence of his own wrongdoings.

IV. The Parties' requests

- 52 The Claimant requests the Appeals Board to
- Annul the Director-General's decisions of 19 April 2024 and of 17 May 2024 implementing a Written Censure against the Claimant;
 - Recommend the Director-General to reconsider her decision in the light of the decision of the Appeals Board;
 - Order the Centre to pay him damages of € 40,000 to compensate for the damage suffered;
 - Order the Centre to reimburse the Claimant's expenses according to the following principles:
 - o The centre covers the costs of translations, if any;
 - o Reasonable travel and subsistence expenses incurred by the claimant shall be reimbursed, except where it is shown that the Claimant was not acting in good faith;
 - o Reasonable legal costs incurred by the Claimant shall be reimbursed to the extent that an appeal is successful.
 - Order the Centre to reimburse the reasonable travel at subsistence expenses incurred by witnesses who have been heard, within limits which it shall fix in agreement with the Director-General, and to be calculated based on the provisions of Article 23 and Annex III of the Staff Regulations.

53 The Respondent requests the Appeals Board

- To reject the Appeal
- To order the Claimant to bear his own costs.

V. Considerations

1. On Admissibility

54 The Appeals Board notes that the Written Censure imposed on the Claimant by the Director-General is a decision that may be challenged before the Appeals Board. It further notes that the Centre's dispute resolution procedures have been exhausted in due time, as required by Article 39.3 of the Staff Regulations. The Appeals Board, therefore, concurs with the parties that the Claimant's appeal is admissible.

2. On the merits

2.1 The legal basis for disciplinary sanctions

55 According to Art. 37.1 Staff Regulations, disciplinary measures may be taken by the Director-General against the staff member guilty of misconduct in the course of duty or otherwise. Article 37.3 provides that the disciplinary measures include the following:

- (a) Oral warning,
- (b) Written censure,
- (c) Withholding of an annual salary increment,
- (d) Deduction from salary in the case of conduct causing loss to the Centre or damage to its property,
- (e) Suspension from duties,
- (f) Dismissal.

56 Article 37.4 says that when a proposal is made that a disciplinary measure under Article 37.3 (b), (c), (d), (e) or (f) be taken against the staff member, the staff member shall be notified immediately in writing. Such notification shall be accompanied by the documents relating to the grounds of the complaint against him or her. The staff member concerned may submit comments in writing. Article 38.1 provides that within five working days of being notified as provided for under Article 37.4, the staff member concerned may request in writing that the case be examined by a Disciplinary Board, which shall be convened by the Director-General within three days, to meet some time not earlier than the third and not later than the sixth working day following the request. According to Article 38.5, the Disciplinary Board shall submit an advisory opinion to the Director-General with proposals regarding the disciplinary measures to be taken, if any, and withholding part of the salary and allowances. If such proposals are not made unanimously, the individual opinions of its members must be recorded. Article 38.6 provides: The Director-General must adopt, within one month following receipt of the advisory opinion of the Board, a decision on a disciplinary measure taking account of such opinion. Reasons must be given for the measure if the Director-General disagrees with the Board's advisory opinion.

- 57 In the present case, the Disciplinary Board by a majority recommended “that at least a **Written Censure** should be adopted as a disciplinary action” (emphasis in original).
- 58 The Appeals Board considers that such a recommendation does not correctly discharge the duty of the Disciplinary Board under Article 38.5 of the Staff Regulations to “submit its proposals to the Director-General of the disciplinary measure to be taken”. In proposing “at least” a Written Censure, the Disciplinary Board deprived of any useful effect the requirement of Article 38.6 of the Staff Regulations that the Director-General provide reasons “if he or she disagrees with the Board’s Decision” (sic), as in this case the Director-General would only be required to provide such reasons if she were to impose an oral warning or no sanction at all.
- 59 The Appeals Board notes, however, that the Claimant has not raised any argument in regard to a possible breach of Article 38.5, that the recommendation of the Disciplinary Board is merely a preparatory act which may not, in principle, itself be challenged, and that any such failure of the Disciplinary Board to comply with Article 38.5 in the present case would not, in the absence of evidence to the contrary, have affected the Claimant’s rights of defence.
- 60 For the purposes of the present proceedings, the Appeals Board considers that the formalities of Articles 37 and 38 of the Staff Regulations have been met, and the Parties do not dispute it. Even with regard to the Claimant’s complaints about the content of the memorandum of 18 December 2023 that the Disciplinary Board had established and submitted to the Director-General, the Appeals Board cannot find that the disciplinary procedure was tainted by formal errors leading to the illegality of the contested decision.

2.2. Misconduct

- 61 The Claimant is right to state that the Centre and its Director-General have to establish and eventually to prove the facts that may be assessed as misconduct justifying a disciplinary sanction.
- 62 The Appeals Board considers in the first place that it is clear from the text of the Written Censure that this disciplinary measure was based primarily on the Claimant’s alleged insubordination, as described in charges 1 and 2, which refer primarily to Article 2(1) and (2) of the Staff Regulations. The Appeals Board will therefore examine these charges first, before taking a view on whether it is also required to examine the other four charges.
- 63 The Appeals Board notes that the Director-General was presented with information extracted from messages exchanged via MS TEAMS or the professional e-mail accounts by the Claimant and Y with staff representatives. However, since the disciplinary charges relating to insubordination were not based on such exchanges, the Appeals Board has decided not to take such information into account in relation to those charges, and to examine whether or not the contested Decision is justified on the basis of facts which are not disputed. It has, therefore, decided to assess the matter based on the two e-mails and the draft petition circulated by the Claimant, and the two e-mails sent by the Director-General.

- 64 With regard to its content and in accordance with its wording, the draft petition cannot reasonably be interpreted as attempting to put pressure on the Director-General (as the Respondent submits). The draft expresses the “deep concern and sadness” and distress of its drafters, who talk of “support[ing]” the Director-General “in calling for an extraordinary Council meeting”. The drafters acknowledge, implicitly but clearly, the prerogative of the Director-General to follow or not to follow their proposal. The draft does not directly call for an extraordinary Council meeting, nor even in terms directly request the Director-General to take an initiative to this end, but merely expresses the drafters’ *conditional* support (“would ... support”) for such an initiative, should the Director-General so act.
- 65 This interpretation of the draft petition is confirmed by the e-mail of 7 November 2023, which reads in relevant part “*Civil servants have the right to voice their concerns ... It is understood that it is then up to the Director-General and member states to take our initiative further or not*” (underlining added).
- 66 The Appeals Board notes that nothing in the two e-mails sent by the Director-General indicates that she apprehended the draft petition as putting pressure on her.
- 67 On the other hand, the Appeals Board does not share the Claimant’s position that the Written Censure was meant to punish him for his political opinions which the Director-General did not share. Nothing in the written documents can prove this allegation. As far as the Written Censure contains quotations reflecting the Claimant’s position, these quotations are meant to show that the draft petition had a political background, without entering in any argument on the quality and tendency of the Claimant’s political convictions.
- 68 However, the first e-mail of the Director-General dated 6 November 2023 shows that the Director-General objected to the attempt, by the Claimant or any other staff member, to “bring[] their political convictions or personal views to work”. In particular, the Director-General very clearly rejected, with regard to the activities of the Centre, the purported analogy, on which the Claimant’s initiative for a petition was founded, between the situation in Gaza in November 2023 and that which had arisen as a result of the invasion of Ukraine by Russia in February 2022.
- 69 It is also obvious from the e-mail of 7 November 2023 entitled ‘Clarification on the open letter (sic) to the DG regarding the situation in the Middle-East’, co-signed by the Claimant and Y, that the Claimant had understood the import of the Director-General’s e-mail of 6 November 2023 but had decided to ignore it. The e-mail states that “decisions emanating from international organisations ... are neither personal views nor political opinions” and, further, that “[c]ivil servants have the right to voice their concerns about the ethical implication of their work, which we believe is particularly relevant in the current situation, as described in the letter”.
- 70 The question here is not whether a resolution of the United Nations General Assembly is a personal view or political opinion, but whether a staff member with no specific remit to ensure the Centre takes action to give effect to such a resolution is entitled to initiate by e-mail or otherwise a staff-wide debate on a topic which, in the Director-General’s words, was “hugely divisive and highly sensitive”, within

and between the States of the Centre and, possibly, amongst staff members of the Centre. Whereas the Director-General's e-mail of 6 November 2023 opposed such an initiative, the Claimant considered on the sole basis of his own belief that such a debate is "particularly relevant in the current situation". In so doing, he put himself above the Director-General and his own concerns above those of the Centre as stated by the Director-General.

- 71 The Appeals Board agrees with the Respondent to consider this position of the Claimant as insubordination and, thus, a violation of his duty to follow the Director-General's orders. The staff member's "Duties and responsibilities" are described in Article 2 of the Staff Regulations as follows:

"2.1: As the objectives of the Centre are international in character, staff members shall carry out their duties and conduct themselves solely with the interest of the Centre in mind; they shall neither seek nor take instructions from any government, authority, organisation or person outside the Centre.

2.2: Staff members shall be subject to the authority of the Director-General and shall be responsible to the Director-General for the performance of their duties. ..."

- 72 The Appeals Board considers, contrary to the view expressed by the Claimant, that the Director-General could take action to prevent the initiation by a staff member of an organisation-wide debate based on the "personal convictions about what are clearly political matters" of that staff member. The Director-General was perfectly entitled to adopt that position, bearing in mind that she is the chief executive officer of the ECMWF whose primary purposes are, according to Article 2 of the "Convention Establishing the European Centre for Medium-Range Weather Forecasts" dated 11 October 1973, "the development of capability for medium-range weather forecasting and the provision of medium-range weather forecasts to the Member States". The powers and duties of the Director-General, which are fixed in Article 9 of the Convention, encompass her responsibility "to the Council for the execution of the tasks assigned to the Centre" and provide that she "shall take all measures necessary for the proper functioning of the Centre". This includes preventing any "significant distraction from [the] work effort [of the Centre] and ... an unknown number of side discussions entirely unrelated to ECMWF's goals and objectives", such as the Director-General adjudged had been provoked by the Claimant's e-mails concerning the draft petition.

2.3. Alleged breach of the Claimant's right to freedom of expression

- 73 The Appeals Board does not concur with the Claimant's contention that his initiative was justified (and thus must not be qualified as disobedience) by his right to freedom of speech (or expression) and by his inherent mandate to ensure the Member States and Co-operating States of the Centre's respect of humanitarian law and resolutions of the United Nations General Assembly.
- 74 The Claimant argued in his Appeal, and again in his Reply, that calling "for respect for international humanitarian law ... unquestionably falls within the scope of the professional missions of the Centre's agents and *in particular*, of" the

Claimant (emphasis added). The Claimant has however failed to show, either in his written pleadings or at the oral hearing, in what sense he has any special remit, which marks him out compared with other staff members, to call for the respect of international humanitarian law.

- 75 Nor has the Claimant responded in any way to the statement in the Written Censure that “ECMWF has staff members in place tasked with advising the Director-General on issues relating to international relations, management matters, communications, legal matters etc. [The Claimant has] not been tasked with any of these functions”.
- 76 The Appeals Board can only reject as manifestly unfounded the Claimant’s assertion that he has some special mission to promote the respect for international humanitarian law in regard to the Centre’s activities, which would allow him to override the stated position of the Director-General.
- 77 The Appeals Board notes that International Administrative Tribunals have always maintained that specific provisions contained in international conventions such as the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union are not directly applicable to international organisations. Nevertheless, many Administrative Tribunals have ruled that they will assume that, unless provided otherwise, the internal law governing the organisation should not be given an interpretation that would be in conflict with fundamental principles enshrined in such international charts which are adopted by most or all of the Member States.
- 78 Moreover, the Centre does not dispute its obligation to comply with the fundamental rights of its staff members, even though it is not party to the European Convention on Human Rights or similar conventions. Thus the Director-General in the “Reasons for [her] Decision” acknowledges that “there is no doubt as to the value of fundamental rights, such as the freedom of expression and participation in democratic processes”. However, the Director-General goes on to note that “every staff member, including [the Claimant], remains bound by their statutory and contractual obligations at ECMWF. Therefore, exercising fundamental rights at the work-place neither means that said obligations cease to apply, nor that exercising them constitutes an excuse or justification for not complying with such obligations”.
- 79 The Appeals Board considers this last observation to be a concise and accurate statement of the law which applies in the present case. It therefore falls to the Claimant to demonstrate that, in exercising his fundamental rights, he has not committed the breaches of his obligations as a member of staff of the Centre which led to the imposition of a disciplinary measure.

80 Staff members of the Centre are bound to exercise their personal freedoms (such as freedom of opinion, of expression, of faith etc.) – which they enjoy also at work – with such caution and restraint that the neutrality and the non-political character of the Centre are not put at risk. This “*obligation de réserve*” incumbent upon any staff member serving in an international organisation is also reflected in Art. 10.2 of the European Convention on Human Rights (on which the Claimant relies), which states that

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

81 Rather than responding to the charges of insubordination, the Claimant has sought to argue on the sole basis of alleged breaches of Articles 8, 10 and 14 European Convention on Human Rights, on the rights to private and family life and to freedom of expression, and the prohibition on discrimination on “political or other opinion”, as if these applied without restriction to members of staff of international organisations.

82 In the first place, and in so far as it might be relevant, the case law of the European Court of Human Rights on which the Claimant relies does not support the sweeping propositions he seeks to draw therefrom.

83 The Claimant contends that paragraph 39 of the Court’s judgment of 15 June 2021 in *Melike v Turkey* establishes that the rights stipulated by Articles 8, 10 and 14 of the European Convention on Human Rights are “equally protected and guaranteed for employees and civil servants working for private companies and international organisations alike” (Application No. 35786/19). The applicant in this case was, however, a contractual agent of the national ministry of education, not a staff member of an international organisation who is subject to specific rights and obligations under the foundational instrument and staff rules of that organisation.

84 Referring to the judgment of 6 November 2012 in *Redfearn v United Kingdom* (Application No. 47335/06, paragraph 57), the Claimant argues that “the case law of the [European Court of Human Rights] prohibits any sanction taken against an employee or civil servant because of his/her real or supposed political opinion”.

85 As is explained above, the Written Censure is not based on the Claimant’s political opinions, but rather the fact that he “placed [his] personal convictions ... above the interest of the Centre”.

86 Moreover, such an unqualified protection for the freedom of expression of employees and civil servants as the Claimant seeks to promote would contradict the text of Article 10.2 of the European Convention on Human Rights.

87 Unsurprisingly, this is also not what *Redfearn* says. The judgment is authority for the much more limited proposition that a State must “take reasonable and appropriate measures to protect employees ... from dismissal on grounds of political opinion or affiliation”, *in casu* by providing them with a means of legal recourse to challenge their dismissal. The European Court of Human Rights did not take a position in this judgment on the compatibility with the Convention or otherwise of Mr Redfearn’s dismissal but held rather that the absence of any possibility for a national court to rule on the legality of the dismissal on grounds of his political views constituted discrimination against him. The present proceedings demonstrate, on the other hand, beyond possibility of argument that, unlike Mr Redfearn, the Claimant does have the possibility to take legal proceedings to protect himself against any discrimination on grounds of his political opinions.

88 Drafting the petition meant introducing a political element into the Centre’s activity disregarding the restraints imposed on the Claimant as a staff member of the Centre which, as a scientific organisation, has no specific vocation to promote the respect of human rights or international law.

2.4. Discrimination on grounds of the Claimant’s political opinions

89 The Claimant alleges that the “disciplinary proceedings ... are based on a clear and express intention to punish him because of his alleged political opinions” in breach of the European Convention on Human Rights. In support of this view, he quotes copiously from memoranda of 24 November 2023 and 18 December 2023.

90 The memorandum of 24 November 2023, entitled “Report on the Case of a petition to the DG,” is addressed to the Director-General by the Director of Administration and the Head of the Human Resources section, recommending in particular that disciplinary proceedings be initiated against four staff members, including the Claimant. This memorandum is not the expression of the Director-General’s opinion and does not demonstrate any intention on her part to “punish” the Claimant because of his “alleged political opinions”.

91 By her memorandum of 18 December 2023, entitled “Proposal for Written Censure and Withholding of an Annual Salary Increment”, the Director-General shared with the Claimant the outcome of the investigation and informed him of the proposal for disciplinary measures. As the Claimant has argued, it contains “countless references to the real or supposed political opinions of [the Claimant]”.

92 That said, the memorandum of 18 December 2023 was not the Director-General’s final decision on the matter; it was a preparatory act which served the purpose in particular of putting the Claimant on notice of the facts found against him and their possible disciplinary repercussions in accordance with Article 37.4, and 37.3(b) and (c) of the Centre’s Staff Regulations.

93 It is particularly noteworthy that the Written Censure of 19 April 2024, also from the pen of the Director-General, does not make any reference to the Claimant’s political opinions, with the exception of an aside note acknowledging that “it is [the Claimant’s] right to be an activist for the Palestinian cause ... and to have [his] private views in this respect”. It may be, in the light of the hearing of the Claimant by the Disciplinary Board, and/or the Claimant’s “extensive written submissions”, that

the Director-General considered that the references to the Claimant's political opinions were unfounded or inappropriate.

- 94 The fact remains that nothing in the Written Censure, which is the act being challenged in the present proceedings, supports the Claimant's allegation that he has been discriminated against because of his political opinions. Instead, as section 1 of chapter D of the Written Censure unequivocally states: the Claimant has "placed [his] *personal convictions* about what are clearly political matters above the interest of the Centre" (emphasis added). The Claimant's political convictions, on the other hand, are not an element of the disciplinary offence.

2.5. No prohibition on the Centre's restricting individual rights

- 95 The Claimant's argument in this regard appears to be based essentially on the absence from the Staff Regulations of a provision equivalent to Article L. 1121-1 of the French Labour Code.
- 96 This argument, by which the Claimant is in effect acting in the interests of the law, is wholly inappropriate in the context of the present proceedings which concern the interpretation and application of the Staff Regulations of an international organisation which is not bound by the national law of its component Member States.

2.6. No abusive personal opinion expressed by the Claimant

- 97 The Claimant argues that the initiative to draft a petition was collective and that "there was never any question of [the Claimant's] acting in a personal capacity".
- 98 In the case of the draft petition, it is clear that the collective initiative was the work of a small number of individuals, each of whom was acting in a personal capacity. In the present context, the opposite of "personal capacity" is "professional capacity," and the Director-General explicitly took the view that in participating in this initiative, the Claimant was not acting in a professional capacity.
- 99 After parsing the text of the draft petition, the Claimant concludes that it "is not the expression of any personal opinion, but merely a concern for respecting international law" (emphasis in original).
- 100 This is manifestly incorrect. The draft petition clearly expresses the personal opinion of its authors that the Centre should take some action with respect to Israel as a co-operating State, and in particular that the Council should "examine what actions the Centre [could] adopt to promote respect of international human rights and humanitarian law".

2.7. The Claimant's pretensions to be treated as a whistleblower

- 101 A whistleblower is a member of staff who reports wrongdoing, such as fraud or harassment, within the organisation by or with the connivance of another staff member or members. Here the Claimant is not arguing that the Centre was obliged to take the action proposed in the draft petition; he cannot therefore claim

to be blowing the whistle on any wrongdoing by the Centre in not taking such action.

2.8. Other comments by the Claimant

- 102 The Appeal's Board takes the view that, even if they were founded, the breach of the right to respect for private and family life alleged by the Claimant would not affect the validity of the imposition of a Written Censure for the principal breaches of the Staff Regulations which have been held against him. The Written Censure turns primarily on his having sent an e-mail promoting the draft petition on 7 November 2023, notwithstanding the indication in the Director-General's e-mail of the previous day pointing out that the analogy he was seeking to draw with the Ukraine situation in 2022 was quite inappropriate, and inviting all staff to "refrain from bringing their political convictions or personal views to work".
- 103 It is the continued promotion of the draft petition, rather than its content, and the fact that the Claimant was acting on the basis of a personal conviction, rather than conducting himself in the interests of the Centre, which constitute the disciplinary offence in the present case. Indeed, even in the context of the present case, the Claimant continues to refuse to acknowledge the authority of the Director-General, arguing that her instruction "to refrain from expressing personal political convictions at work" was "unlawful".
- 104 The Appeals Board also takes the view that the reasons provided by the Director-General in the contested Decision are sufficient to sustain the imposition of a Written Censure in respect of the insubordination displayed by the Claimant in breach of Articles 2(1) and 2(2) of the Staff Regulations and, as need be, on Article 5(f)(i) of the Charter of Ethics and Conduct. In these circumstances, it is not necessary to examine the remaining findings of breaches of the rule against conflicts of interests, the Email Acceptable Use Policy, the Policy on Personally Identifiable Information Protection and the Staff Instruction regarding the use of e-mail lists; even if the Claimant's contentions regarding these clearly ancillary matters were to be upheld, this would not justify annulling the contested Decision.

2.9. Unequal treatment

- 105 While the Claimant did not challenge the adequacy of the statement of reasons for the disciplinary measure in his appeal, he points in his Reply at a possible lack of equal treatment tainting the challenged decision.
- 106 Besides the fact that this argument could be considered not admissible because it was not included in the Claimant's statement of Appeal (Article 1.8 of Annex VII to the Staff Regulations rules that Appeals must state all grounds of appeal), the Appeals Board also notes, on a purely subsidiary level, that it cannot find that this challenge is justified.
- 107 In this context it should first be recalled that according to well-settled international administrative jurisprudence the choice of disciplinary sanctions falls within the discretionary authority of an international organisation and is subject to only limited review. If misconduct is established and the disciplinary procedure had been correctly followed the competent administrative tribunal will not interfere with the

organisation's choice and motivation of the sanction unless it has reasons to conclude that the disciplinary measure chosen is manifestly abusive or disproportionate.

- 108 Furthermore, except in the case where a number of staff members are accused of exactly the same breach of the same rules in the same factual circumstances, the proportionality of a disciplinary sanction may only be assessed on its own merits, and in the light of the reasoning given for that sanction in that case.
- 109 The Appeals Board does not know anything about the disciplinary offences of which the other three staff members, including Y, were found guilty, nor the reasons for which the Director-General imposed different sanctions on them. The Claimant, in his comprehensive written submissions, did not provide any details allowing the Appeals Board to conclude that there was unequal treatment.
- 110 The Claimant was free to ask his colleagues permission to disclose such details, while the Centre was bound to confidentiality of disciplinary proceedings which is usually acknowledged to apply to the international civil service. It was not for the Organization to disclose facts and attenuating circumstances considered in other disciplinary procedures, including for the case of Y.

3. Damages

- 111 According to Article 1.4 of Annex VII to Art. 39 of the Staff Regulations – Conditions of appeal and rules of procedure for the Appeals Board – the Appeals Board may, if the decision was annulled, order the Respondent to compensate the Claimant for damages suffered as a result of the annulled decision. This provision reflects the general principle of civil liability (adopted, e.g., by the Court of Justice of the European Union and derived from its understanding of the general principles of civil liability of Member States) that a claimant must show illegal conduct on the part of the defendant organisation, provide proof of the reality and the extent of the injury allegedly suffered and demonstrate that illegal conduct in fact caused the injury. The absence of any one of these elements is sufficient to reject a claim in damages.
- 112 In the case at hand, the Claimant's claim must be rejected because he has not shown illegal conduct on the part of the Centre. Moreover, the Respondent is right in pointing out that the claimed amount of 40,000 Euros is not substantiated. The Claimant has not shown that any injury he suffered (the reality of which he has also not demonstrated) was due to any act of the Centre, as opposed to his own conduct. The Claimant deliberately embarked upon a project which was opposed by the Director-General and not supported by the Staff Committee. So, the Claimant had to consider that he was engaging in a struggle that might take time, impact his health and well-being and even damage his professional reputation within the Centre.

V. Conclusions

- 113 The Appeals Board, thus, finds that the appeal is unfounded.

- 114 Regarding the claim for travel and subsistence expenses, the Appeals Board notes that the Claimant, living in Bonn, did not prove to have incurred such expenses.
- 115 As to costs, Article 6.3 (c) of Annex VII provides that reasonable legal costs incurred by the claimant shall be reimbursed to the extent that an appeal is successful.
- 116 On these grounds, the Appeals Board decides:
1. The appeal is dismissed.
 2. The Claimant has to bear his own legal costs.

Michael Groepper
Chair

Susan Madry
Secretary