

## EIGHTY-FIFTH SESSION

### *In re* Mussnig (No. 3)

#### Judgment 1758

The Administrative Tribunal,

Considering the third complaint filed by Mrs. Gabriele Mussnig against the World Health Organization (WHO) on 14 May 1997 and corrected on 29 May, the WHO's reply of 10 September, the complainant's rejoinder of 27 November 1997 and the Organization's surrejoinder of 25 February 1998;

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

Having examined the written submissions and decided not to allow the complainant's application for hearings;

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

A. Facts that have a bearing on this complaint are set out in Judgments 1376 and 1504, on Mrs. Mussnig's first two complaints, and 1619 (*in re* Eben-Moussi). In Judgment 1376 the Tribunal observed that the WHO did not "seek to refute" the charges of sexual harassment she had made against her supervisor and had not even submitted a written denial by him.

In November 1994 the Organization set up an "ad hoc grievance panel" to look into her charges against him. The panel submitted a report to the Director-General on 8 June 1995 and the following month the Director-General issued a statement citing the panel's finding that her supervisor had not been guilty of sexual harassment.

On 1 September 1995 the Organization lodged an application for the review of Judgment 1376. In her surrejoinder of 16 April 1996 on that application the complainant claimed damages for injury done to her good name by the publicity given to the panel's report and for the Organization's wrongful treatment of her. In Judgment 1504 of 11 July 1996 the Tribunal dismissed the WHO's application and held that her claim to damages disclosed a distinct cause of action that she might pursue in another suit.

In a letter of 6 September 1996 she asked the Director-General to grant her "substantial moral damages for the Organization's continuing persecution ... and for the damages to [her] good name due to rumours arising out of publicity given to the report of the Ad Hoc Grievance Panel". In a reply dated 9 October the Director of the Division of Personnel denied her allegations, rejected her claims and promised to respond "in the appropriate forum" if she wished to press her claims.

By a letter of 7 February 1997 the secretary of the Board of Appeal told her that the Director-General had given her leave to put her case directly to the Tribunal. That is the decision she is impugning.

B. The complainant accuses the WHO of evading its obligations under Judgment 1376 by a "stratagem" that denies the Tribunal's authority. Appointing the panel, she submits, made a "mockery" of justice and due process. Its report has no validity. Its proceedings were not adversarial. It showed bias against her. Before the Director-General commented she was given no opportunity of rebutting its allegations. It made disparaging and "highly defamatory" statements about her state of mind and her behaviour.

Because of the publicity the press gave to the panel's findings the WHO failed to show proper regard for her dignity and good name. The "long-term" harm to her career was grave. She invites the Tribunal to assess the "effects on her life" of a predicament she has been "innocently entangled" in for six years.

She claims moral damages in an amount equivalent to eight years' salary "with full restoration of pension benefits and all other allowances". She seeks the "cleaning" of her files and an end to "blackmail" in the form of an "assurance in writing". She claims 9,000 Swiss francs towards costs.

C. In its reply the WHO rebuts her pleas. Its appointing a panel and later applying for review were neither attempts to shirk its obligations under Judgment 1376 nor denials of the Tribunal's authority. The reason why it appointed the panel was to see whether to take disciplinary action against the complainant's former supervisor. The panel was independent, and the Director-General "neither accepted nor rejected" its recommendations. The Organization says it filed its application for review of Judgment 1376 so as to allow the Tribunal to rule on any effect the report might have on the judgment.

The "alleged publicity" lent to the panel's report could not have marred the complainant's reputation or prospects of employment. The Organization treated the report in the "strictest confidence". In answer to persistent questions from the press the Director-General made a "neutrally worded" statement that neither named her nor denied that she had suffered sexual harassment. The publicity was not of the WHO's making, though it may have been the "inevitable result" of a public ruling by the Tribunal.

D. In her rejoinder the complainant enlarges on her pleas. She charges the WHO with breach of its duty of care towards her. It failed to keep the panel's report secret until the Tribunal had ruled on its application for review. Indeed it released what it called a "neutral" extract of it. If the reason why it set up the panel had really been to see whether to take disciplinary action against her former supervisor it would not have given the panel terms of reference that were prejudiced against her. The panel recommended stopping payments to her in execution of Judgment 1376. The WHO hastened to end her employment on grounds of "unsuitability", much as her supervisor had himself advised. She presses her claims.

E. In its surrejoinder the WHO denies that appointing the panel or applying for review of Judgment 1376 damaged her reputation or caused her any other injury. Though tardy, its decision to look into her charges was warranted. It did its utmost to see that the panel's findings were not divulged, and she had the opportunity of stating her views on it before the Tribunal. There is no evidence to suggest that the publicity given to the report was harmful to her.

The decision not to renew her appointment is the subject of another complaint and is an issue immaterial to this one.

## CONSIDERATIONS

1. On 31 May 1993 Mrs. Mussnig filed her first complaint against the World Health Organization challenging its decision not to renew her appointment and its treatment of her, which she saw largely as reprisals for her rejection of sexual advances from her supervisor while she was working for the Organization at Luanda, in Angola.

2. Ruling on that complaint in Judgment 1376 of 13 July 1994, the Tribunal ordered the WHO to reinstate her, to grant her a contract for two years as from the date of the judgment and to pay her 25,000 Swiss francs in moral damages.

3. In November 1994 the Organization set up an "ad hoc grievance panel" to look into her charges of sexual harassment. On 8 June 1995 the panel submitted a report to the Director-General who on the strength of it issued a statement pointing out "significant contradictions" between the panel's findings and her allegations and recording the panel's view that her supervisor had been innocent of sexual harassment. Acting on the panel's findings, the WHO filed an application for review of Judgment 1376. The Tribunal dismissed it by Judgment 1504 of 11 July 1996.

4. On 21 December 1995 the complainant's former supervisor filed a complaint against the WHO claiming moral damages on the grounds that the Organization had left his good name undefended by confining to the issue of receivability its reply to Mrs. Mussnig's first complaint and by neglecting to tell him of her charges or to answer them. In support of his case he relied mainly on the panel's report. In Judgment 1619 the Tribunal awarded him 10,000 United States dollars in moral damages.

5. On 9 September 1996 the complainant filed her second complaint, an application for the execution of Judgment 1376. The Tribunal dismissed it in Judgment 1731 of 29 January 1998.

6. On 14 May 1997 Mrs. Mussnig filed the present complaint, her third, against the WHO. She accuses the Organization of continuing persecution of her and of giving untoward publicity to the panel's report. In support she cites the Organization's behaviour over its application for the review of Judgment 1376. She claims damages in an

amount equivalent to eight years' pay and reinstatement in her pension and other benefits. By way of redress for moral injury she seeks the "cleaning" of her personal file and an end to "blackmail". She seeks 9,000 Swiss francs in costs.

7. Before coming to the Tribunal the complainant filed a claim in a letter she wrote on 6 September 1996 to the Director-General. By a letter of 9 October 1996 the Director of the Division of Personnel refused her claim on the Director-General's behalf. On 27 November she filed notice of appeal with the secretary of the headquarters Board of Appeal. On 5 December the secretary asked her to enter a brief within ten working days and on the 17th informed her of the membership of the Board. By a letter of 3 January 1997 the secretary acknowledged receipt of her brief and told her that the chairman of the had granted the Administration further time to see whether her appeal was receivable. Under cover of a letter of 16 January the secretary sent her the text of a memorandum that the chief of the Administrative and Staff Support Service had written to the secretary on 13 January. The chief of that service said that he might be recommending that the Director-General allow her to refer her case directly to the Tribunal, but that that would require her consent. In a letter of 27 January the complainant told the secretary that she had no objection to such direct referral. On 7 February 1997 the secretary informed her that the Director-General had given her leave to put her case to the Tribunal.

8. Since the Director-General relieved her of filing an internal appeal, the complainant may be deemed to have exhausted her internal remedies and so to have met the requirement of Article VII(1) of the Tribunal's Statute.

9. She founds her claim to moral damages on her contentions that the Organization sought to shirk its obligations under Judgment 1376 by getting the panel to look into her charges of sexual harassment; that the panel's findings were baseless and libellous; that the proceedings before the panel were not properly adversarial; and that the untoward publicity the Organization gave the findings harmed her good name and job prospects.

10. Judgment 1619 said under 6:

"When a staff member makes charges as serious as sexual harassment an organisation must do its utmost to afford protection. But it must at the same time carry out a full and proper inquiry that respects the rights of the accused. Here the WHO obviously failed to do so. Instead it originally preferred to let the Tribunal rule without adducing evidence that had proved material."

In the circumstances the Organization may not be deemed to have acted wrongly in holding the inquiry.

11. Having herself declined to appear before the panel, the complain-ant may not properly plead that its proceedings were not adversarial.

12. Not a single item of the voluminous evidence before the Tribunal lends any credence to her charges against the WHO of wilful hostility or persecution. Indeed, as was held in Judgment 1731, the Organization has duly executed Judgment 1376.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

*(Signed)*

Michel Gentot  
Julio Barberis  
James K. Hugessen

A.B. Gardner

