107th Session **Judgment No. 2861**

THE ADMINISTRATIVE TRIBUNAL,

Considering the interlocutory order in consideration 17 of Judgment 2742, delivered on 9 July 2008 on the first complaint filed by Ms M. d R. C. e S. d V. against the World Meteorological Organization (WMO);

Considering the complainant's third complaint against WMO, filed on 25 May 2007, the Organization's reply of 5 October 2007, the complainant's rejoinder of 8 January 2008 and WMO's surrejoinder of 19 February 2008;

Considering the complainant's fourth complaint against WMO, filed on 11 December 2007, the Organization's reply of 9 April 2008, the complainant's rejoinder of 4 November and WMO's surrejoinder of 28 January 2009;

Considering the complainant's fifth and sixth complaints against WMO, filed on 18 and 11 December 2007 respectively, the Organization's replies of 14 August 2008, the complainant's rejoinders of 1 December 2008 and WMO's surrejoinders of 28 January 2009;

Considering the complainant's seventh complaint against WMO, filed on 12 December 2007, the Organization's reply of 14 August 2008, the complainant's rejoinder of 1 December 2008, WMO's

surrejoinder of 28 January 2009, the complainant's additional submissions of 25 February and the letter of 9 April 2009 by which the Organization indicated that it had no comments to make on those additional submissions;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. Facts relevant to this case are to be found in Judgments 2742 and 2743, delivered on 9 July 2008, concerning the complainant's first and second complaints. It may be recalled that in her capacity as Chief of the Internal Audit and Investigation Service (IAIS) the complainant was asked to conduct an investigation into a serious fraud within WMO. In April 2005 a disagreement arose over the findings presented in her ninth and final investigation reports concerning the actions of the Organization's senior legal adviser. The Secretary-General and other senior managers, assisted by an external lawyer, Mr S., tried to persuade the complainant to remove these findings from her reports on the basis that they were unsubstantiated. A lawyer acting for the senior legal adviser also asked the complainant to delete the contested findings, whilst the Secretary-General engaged Mr M. to provide a legal opinion on the matter. Meanwhile, notwithstanding the complainant's objections, the Secretary-General proceeded to "reorganise" the internal oversight function, separating the complainant from her functions as Chief of IAIS and reassigning her to a post under the authority of the Director of a new Internal Oversight Office (IOO). The decision of 4 October 2006 by which the Secretary-General dismissed her appeal against that reassignment was set aside by the Tribunal in Judgment 2742, except as regards the claim of harassment that it contained, which was stood over for further consideration in conjunction with other complaints presently before the Tribunal.

The decision to reassign the complainant to the post of Chief of the Internal Audit Service (IAS) took effect on 1 February 2006. She

was designated officer-in-charge of IOO pending the arrival of the new Director, who took up his functions on 13 February. During the first two weeks of February, the Director of IOO asked one of the complainant's subordinates to provide him with various documents concerning, inter alia, the fraud investigation. From 13 to 21 February the complainant undertook a mission to Brazil, but as from 27 February she was on sick leave until 8 June, when she returned to work on a part-time basis. During her absence the Director of IOO sent her a series of e-mails concerning work-related matters, including the audit which had necessitated her mission to Brazil, the whereabouts of the personal belongings of the main perpetrator of the fraud and the fact that the lock to her office had been changed. In responding to these e-mails, the complainant indicated that she could no longer perform any tasks associated with the functions of her former position of Chief of IAIS, since they had been assigned to the Director of IOO pursuant to the unlawful reorganisation of internal oversight.

In a letter of 10 May 2006 addressed to the Secretary-General and copied to the WMO President, the members of the Audit Committee and the external auditor, the complainant stated that, in view of the "continuing and improper communications" from the Director of IOO, she was "forced [...] to file a formal grievance for harassment against [him]". After having indicated in August that she did not wish to pursue that grievance, the complainant nevertheless referred it to the Joint Grievance Panel on 16 September 2006 together with the allegations of harassment that she had raised in April 2005 in the context of her appeal against her reassignment. In the meantime, the Secretary-General transferred her temporarily to another department and informed her that he would review her administrative situation once the outcome of that appeal was known.

On 12 October 2006, after the Joint Appeals Board had recommended that the appeal against her reassignment be rejected as devoid of merit, the Secretary-General met with the complainant and informed her that he would not renew her contract upon its expiry on 31 May 2007. He confirmed that decision in writing by a memorandum of 25 October 2006, referring in particular to the fact

that, despite the Executive Council's decision to close the internal investigation in July 2005, she had persisted in alleging that the reorganisation of internal oversight was aimed at preventing her from accomplishing her professional duties. According to the Secretary-General, she had abused her prerogatives as internal auditor in order to defend her personal opinion, particularly in her communications with the Audit Committee and several Executive Council members. Moreover, she had hardly produced any work since her reassignment to the post of Chief of IAS. The Secretary-General considered that her conduct justified terminating her appointment under Chapters IX and X of the Staff Rules, and he warned that he would not hesitate to do so if, during the remaining period of her contract, she persisted in her behaviour. That same day, he wrote to the Chairman of the Joint Grievance Panel to inform him of the composition of the panel that would examine the complainant's harassment grievance and to provide him with some "background information" on the case.

By a memorandum of 27 October 2006 the complainant asked the Secretary-General to reconsider the content of his memorandum of 25 October which, according to her, contained 11 decisions constituting clear examples of abuse of power. She accused him of retaliating against her and of violating the Staff Rules as well as the Standards of Conduct for the International Civil Service. On 3 November, referring to the warning given in his memorandum of 25 October, the Secretary-General dismissed the complainant with immediate effect. In his view, her reaction to that memorandum was "no more than a repeat of the insults, innuendos and false statements [he] ha[d] patiently asked [her] to stop in the last year", and instead of heeding his warning she had "chosen to exacerbate [her] conduct". The complainant's lawyer immediately requested reconsideration of that decision, but the Secretary-General confirmed it by letter of 24 November. The complainant lodged appeals on 27 November 2006 against the decisions of 25 October and 3 November with the Joint Appeals Board.

On 1 December 2006 the Organization's internal newsletter, known as "WMO Info", informed staff that the complainant had been "separated from WMO" in the English version, or dismissed from

her functions (*"démise de ses fonctions"*) in the French version. A few hours later, this edition was retracted and a new one was circulated in which the complainant was not mentioned. Efforts were made to recover as many copies as possible of the first edition. On 19 December the complainant filed an appeal with the Joint Appeals Board in respect of this incident, describing it as "a gross violation of [her] privacy and [her] right to due process". That same day the Secretary-General apologised to the complainant in writing, explaining that the information concerning her separation from service had been published by mistake despite his express instructions to the contrary.

By letters of 13 February 2007 the complainant informed the Secretary-General that she wished to file an appeal with respect to certain statements made by three WMO staff members which she considered to be defamatory. Firstly, a WMO spokesperson had stated during a broadcast of the American channel Fox News on 31 January 2007 that the complainant had been dismissed for "serious misconduct". Secondly, the Organization's legal counsel had written, in a letter of 26 January 2007 addressed to her, that her "media campaign [...] testifie[d] of behaviour unbefitting international civil service". Thirdly, the Chief of the Human Resources Division had stated in a letter of 12 February 2007, likewise addressed to the complainant, that "WMO ha[d] a duty to prevent further breaches of [her] obligations as a former official as well as to protect confidential information from unauthorized disclosure". The complainant also objected to a number of statements made by the Chief of the Human Resources Division in response to questions that had been put to her by the Joint Appeals Board. The Secretary-General informed the complainant by letter of 27 February 2007 that she could not avail herself of the internal appeal procedure in respect of these matters, because they did not concern the observance of the terms of her appointment, which had ended on 3 November 2006. He added that she could, however, file a complaint directly with the Tribunal. The complainant's third complaint is directed against the Secretary-General's dismissal of her appeal with respect to the above-mentioned statements.

On 16 August 2007 the Joint Grievance Panel completed its report on the complainant's allegations of harassment. It found that some of the actions of the Director of IOO constituted harassment, but that the allegations concerning the Secretary-General, the Deputy Secretary-General, the Assistant Secretary-General and the Director of Resource Management were unsubstantiated. It did not consider the complainant's allegations against Mr S. and Mr M. on the grounds that these persons had been hired as consultants and had never been staff members of the Organization.

The complainant's appeals against the decisions of 25 October and 3 November 2006 and the announcement in WMO Info were the subject of a single report by the Joint Appeals Board, which recommended that all three appeals be dismissed. On 31 August 2007 that report was submitted to the Secretary-General, who notified the complainant by letter of 28 September 2007 of his decision to reject not only her appeals, but also her harassment grievance, since he did not agree with the Joint Grievance Panel's conclusion that the Director of IOO had harassed her. The decisions conveyed to the complainant in the letter of 28 September are the subject of her fourth, fifth, six and seventh complaints.

B. Regarding the statements of WMO staff members which she considers to be defamatory (complaint No. 3), the complainant contends that the spokesperson's statement on Fox News was untrue and constituted a breach of the confidentiality of disciplinary measures. It was widely publicised, caused irreparable damage to her professional reputation and injured her dignity. The statements made by the legal counsel and by the Director of the Human Resources Division were authorised by the Secretary-General, who wrongly rejected her internal appeal on the basis that it did not concern the observance of the terms of her appointment. The legal counsel abused his position, as he is not entitled to express an opinion on a staff member's behaviour, and the allegations of the Director of the Human Resources Division, both in her letter of 12 February and in her submission to the Joint Appeals Board, were false and offensive. The complainant requests that the Secretary-General be ordered officially to withdraw the statement

made on Fox News and to provide the latter with a copy of his memorandum of 3 November 2006 so that the statement may be publicly rectified. In respect of this incident, she seeks at least five years' salary in moral damages as well as a letter of apology from the Secretary-General, to be circulated to all WMO staff. She claims four months' salary in moral damages in respect of the offensive statements by the legal counsel and the Director of the Human Resources Division, and she requests that disciplinary proceedings be initiated against these two staff members. She also claims costs, and she requests that the Secretary-General be ordered to send her a written communication correcting their statements and to correct the false information provided by the Director of the Human Resources Division to the Joint Appeals Board.

In support of her complaint concerning her allegations of harassment (complaint No. 4) the complainant points to the Organization's failure to comply with the provisions of Service Note No. 26/2003. She submits that the Joint Appeals Board dealt with her appeal against her reassignment without having referred the allegations of harassment that it contained to the Joint Grievance Panel, and six months elapsed before it informed her that it had adopted that approach. The Secretary-General delayed and impeded the examination of her allegations by requiring her to resubmit them to the Joint Grievance Panel on 16 September 2006, thereby abusing his power. He then wrongly sought to influence the Panel by providing "background information" in his memorandum of 25 October to the Chairman of the Panel – a document on which she was never asked to comment. The composition of the Panel was flawed, because the Chairman was the supervisor of one of its members, and the independence of the Panel and of the Joint Appeals Board was compromised by the fact that the members of these bodies depend on the Secretary-General for the extension of their appointments. The complainant also criticises the Panel for failing to adhere to the time limits stipulated in Service Note No. 26/2003. In this complaint she asks the Tribunal to quash the Secretary-General's decisions of 4 October, 25 October and 3 November 2006 and to order her reinstatement as Chief of IAIS effective 1 February 2006

with all the legal consequences that this implies. She also claims at least 500,000 dollars in moral damages, an award of aggravated and exemplary damages, interest at the rate of 10 per cent per annum on the sums awarded and costs.

With regard to her summary dismissal (complaint No. 5), the complainant contends that this decision, which was unsubstantiated and which was not preceded by any disciplinary procedure, is tainted with procedural flaws resulting in a denial of due process. Furthermore, it was taken while she was on sick leave. The complainant also alleges abuse of authority, malice, ill will and prejudice on the part of the Secretary-General, and she points to flaws in the proceedings of the Joint Appeals Board and of the Joint Grievance Panel. She asks the Tribunal to quash the decision of 3 November 2006 and to order her reinstatement under a fixed-term contract with an extension of five years from the date of reinstatement. She claims the salary and benefits due from the date of her dismissal to the date of her reinstatement, and she seeks an injunction to prevent WMO staff from harassing her in future. In addition, she claims material and moral damages, an award of at least 1 million United States dollars in exemplary damages, at least 100,000 dollars in costs and interest at the rate of 10 per cent per annum on all sums awarded.

As far as the publication in WMO Info is concerned (complaint No. 6), the complainant asserts that the announcement in question contained false information insofar as it indicated that she had been dismissed from a position which, at the material time, she no longer held. The announcement was offensive and, from both a professional and a personal point of view, caused her irreparable harm. The decision of summary dismissal was confidential, and the Secretary-General abused his position by disclosing it in order to retaliate against her. In this complaint she claims at least two years' salary in moral damages, an award of aggravated and exemplary damages, costs and an order that the Secretary-General's memorandum of 3 November 2006 be circulated amongst WMO staff, together with the brief that she submitted in the context of her appeal against her summary dismissal.

Lastly, with respect to the memorandum of 25 October 2006 by which the Secretary-General notified her of the non-renewal of her appointment (complaint No. 7), the complainant contends that the 11 decisions contained in that memorandum constitute disguised, unjustified and disproportionate disciplinary measures imposed in breach of the relevant provisions of the Staff Regulations and Rules. These decisions are tainted with a mistake of law insofar as they were taken before the Joint Grievance Panel had examined her allegations of harassment. They are also tainted with prejudice, malice, ill will and abuse of authority on the part of the Secretary-General, whose intention was to retaliate against her for her actions in uncovering fraud committed by high-ranking officials. She was denied due process as a result of the absence of valid reasons for these decisions and the Organization's failure to follow the disciplinary procedure. Moreover, the proceedings of both the Joint Appeals Board and the Joint Grievance Panel were flawed, particularly because of the composition of these bodies and the fact that they did not interview her. She asks the Tribunal to quash the decisions contained in the memorandum of 25 October 2006 with all the legal consequences that this implies, including the retroactive award of the salary and benefits due from the date of her dismissal to the date of her reinstatement in the post of Chief of IAIS or an equivalent post, with interest at the rate of 10 per cent per annum. She also claims at least 100,000 Swiss francs in moral damages, an award of aggravated and exemplary damages, costs and a formal letter of apology.

In each of her complaints the complainant requests hearings.

C. In its reply to the third complaint WMO rejects the argument that the statement made by its spokesperson during a television broadcast was untrue. It is a fact that the complainant was dismissed for serious misconduct, and several newspaper articles published in January 2007 prior to the Fox News broadcast indicate that it was she who first disclosed that fact to the media. Moreover, the complainant had made false statements concerning her dismissal during that broadcast, and the Organization's right to reply authorised it to clarify the legal grounds on which she had been dismissed. The statements made by the

legal counsel and by the Director of the Human Resources Division in their correspondence with the complainant were fully justified in view of the breaches of confidentiality committed by the latter. As for the Director's reply to the questions of the Joint Appeals Board, this is protected by the immunity that attaches to statements made in the context of proceedings before that body. Besides, the statements in question were relevant, contained no offensive language and reflected the Director's honestly-held opinion. The Organization views this complaint as an abuse of process and asks the Tribunal to award nominal damages and costs against the complainant.

Regarding her fourth complaint, the Organization recalls that her criticism of the handling of her harassment allegations by the Joint Appeals Board was raised in her first complaint, on which the Tribunal has already ruled. Her objection to the composition of the Joint Grievance Panel was duly examined by the Panel, which considered it to be unfounded. The complainant has produced no evidence to support the view that the members of the Panel and of the Joint Appeals Board were unable to act independently because they feared for their jobs. She herself did not comply with the time limits stipulated in Service Note No. 26/2003, and some of the delay in the Panel's proceedings is attributable to requests made by her. Referring to the Secretary-General's memorandum of 25 October 2006 to the Chairman of the Panel, WMO contends that the fact that a person accused of harassment submits an initial reaction to the Panel before being invited to do so does not vitiate the procedure. At the complainant's request, she was provided with a copy of that document on 19 February 2007 and she could have commented on it in her submissions to the Panel. Nor was the procedure vitiated by the fact that she was not interviewed by the Panel, since this is not a requirement under Service Note No. 26/2003. The Organization considers that her allegations of harassment were made maliciously for improper motives, and it maintains that they are unsubstantiated.

For reasons of procedural economy, WMO submits the same brief in reply to the complainant's fifth and seventh complaints. It asserts that her allegations of improper motives, ill will, malice, prejudice and

retaliation are false and unsubstantiated and it points out that they have been rejected not only by the Joint Appeals Board and the Joint Grievance Panel, but also by the Organization's governing bodies. Her allegations of vote-rigging are not supported by the findings presented in her investigation reports, and the same applies to her allegations concerning the senior legal adviser, as confirmed by the independent review carried out by Mr M. The complainant was not forced to change her reports; on the contrary, special care was taken to explain to her that she could not present as a finding what was merely speculation on her part. The decision not to renew her contract, like the summary dismissal that followed, was based on a pattern of continuous misconduct. The fact that she questioned the legality of the reorganisation of internal oversight only after she had been informed that she had not been selected for the post of Director of IOO shows that her allegations were made in bad faith. Moreover, the complainant abused her position as internal auditor and used blackmailing methods in order to obtain an appointment at a higher grade.

In reply to the complainant's sixth complaint, WMO recalls that it acknowledged that a mistake had been made with respect to the announcement in WMO Info and that it did its utmost to correct it without delay on its own initiative. Almost all copies were retrieved. The Secretary-General assumed responsibility for the mistake and apologised. Consequently, the allegation that this publication was intended to harm her is unfounded. The inclusion in an internal bulletin of information concerning staff movements, including cessation of service, does not violate any provision. In any case, no indication was given as to the disciplinary nature of her separation from service. The Organization also points out that the complainant herself was eager to give the widest possible publicity to her dismissal, through the media campaign that she waged against WMO.

The Organization requests that the complainant's third, fourth, fifth, sixth and seventh complaints be joined by the Tribunal.

D. In her rejoinders the complainant develops her arguments. She also asks the Tribunal to order the Organization to disclose a number of documents.

E. In its surrejoinders WMO maintains its position and urges the Tribunal to take into account in its ruling the unacceptable use of false and defamatory allegations by the complainant and her counsels, not only in the present proceedings but also in their media campaign against the Organization.

F. The additional submissions entered by the complainant in the context of her seventh complaint are documents submitted as evidence of certain work assignments completed by her.

CONSIDERATIONS

1. The background facts are to be found in Judgment 2742. Briefly, the complainant was appointed Chief of the Internal Audit and Investigation Service (IAIS) of the World Meteorological Organization (WMO) on a two-year contract commencing on 1 June 2003. In that capacity, she was involved in the investigation of a serious fraud within WMO. Her contract was renewed from 1 June 2005 until 31 May 2007. Following the introduction of the Internal Oversight Office (IOO), she was assigned to a new post, Chief of the Internal Audit Service (IAS), with effect from 1 February 2006. In Judgment 2742, the Tribunal held that the decision to reassign the complainant to that new post was unlawful and awarded her material and moral damages. The complaint that led to that judgment also included a claim for harassment which the Tribunal stood over for further consideration in conjunction with three of the other complaints presently before the Tribunal. The outstanding harassment claim will now be considered along with those other complaints.

2. In July 2006 the complainant was temporarily transferred as a Special Adviser within the Resource Management Department (REM) on the understanding that her position would be reviewed following the outcome of her internal appeal with respect to her reassignment as Chief of IAS. In that appeal, the complainant had made claims of harassment which were not then considered. On 16 September 2006 she referred those claims to the Joint Grievance

Panel. The Joint Appeals Board established to consider the complainant's appeal with respect to, amongst other things, her reassignment, recommended that that appeal be rejected and the Secretary-General informed her to that effect on 4 October 2006. The complainant met with the Secretary-General on 12 October 2006 when he informed her that her contract would not be renewed upon its expiry on 31 May 2007 and that she would not be returned to the post of Chief of IAS. He confirmed his decisions to that effect by letter dated 25 October 2006. On the same day the Secretary-General appointed a Chairman of the Joint Grievance Panel to investigate the complainant's allegations of harassment. On 27 October, the complainant requested a review of the decisions not to renew her contract and not to return her to the post of Chief of IAS. No reply having been received in the meanwhile, she initiated an appeal with the Joint Appeals Board on 27 November 2006.

3. The complainant's request for review of the decision not to renew her contract was characterised by the Secretary-General as a repetition of "insults, innuendos and false statements" and, in consequence, he informed her by letter of 3 November 2006 that her services were terminated with immediate effect. Her legal adviser requested reconsideration of that decision the same day and, again, on 8 November 2006. That was refused on 24 November and on 27 November the complainant filed an internal appeal with the Joint Appeals Board with respect to that decision. A statement that the complainant's services had been terminated ("*démise de ses fonctions*") was published in WMO Info on 1 December 2006. She thereupon sought compensation and other remedies with respect to that publication. Her request was refused and she lodged another internal appeal.

4. The complainant filed written submissions in support of her claim of harassment with the Joint Grievance Panel in March 2007. The Panel found that, save in one respect, her claims were not substantiated. Its report was referred to the Joint Appeals Board established to consider the complainant's appeals with respect to the

decisions of 25 October and 3 November 2006 and the decision to refuse her requests with respect to the publication of her termination in WMO Info. On 30 August 2007 the Board recommended that all three appeals be rejected. The Secretary-General accepted that recommendation and, by letter dated 28 September 2007, informed the complainant accordingly. In the same letter, he informed her that he rejected the Joint Grievance Panel's finding of one instance of harassment and that he had closed the case.

5. The decision of 28 September 2007 rejecting the complainant's claim of harassment and her three appeals is the subject of her fourth, fifth, sixth and seventh complaints. Her third complaint relates to a statement by a spokesperson for WMO made on 31 January 2007 to Fox News, namely:

> "The reason WMO's Secretary-General summarily dismissed Ms V. is serious misconduct. I can tell you it is serious misconduct."

On 13 February 2007 the complainant sought damages and other relief with respect to that statement and indicated that, if not granted, she would proceed with an internal appeal. She also sought relief with respect to certain other statements made by WMO staff members. She was informed on 27 February that the WMO internal appeal machinery was not available to former staff members but that she could file a complaint directly with the Tribunal. This she did on 25 May 2007.

6. It is necessary to first deal with the question of joinder. It is appropriate that all six complaints before the Tribunal be joined, notwithstanding that the complainant has objected to that course. The complaints are, to a large extent, interdependent. Thus, the questions whether the complainant is entitled to relief and, if so, to what relief in respect of the statement to Fox News that she was dismissed for serious misconduct (Veiga No. 3) depend on the validity of the decision to terminate her services with immediate effect (Veiga No. 5). So, too, does the question of relief with respect to the publication in WMO Info that her services had been terminated (Veiga No. 6). Further, the decision not to renew the complainant's contract,

the subject of her seventh complaint, was overtaken by the decision to terminate her services with immediate effect (Veiga No. 5) and will fall for consideration only if that latter decision is set aside. And in her sixth and seventh complaints, the complainant seeks aggravated and exemplary damages by reason of harassment. The final administrative decision of 28 September 2007 in respect of her claims of harassment is the subject of her fourth complaint and her claims in that regard are also the subject of that part of the first complaint that was stood over by Judgment 2742. Aspects of those claims are also relevant to the complainant's claims of improper purpose in relation to the decisions not to renew her contract and to terminate her services with immediate effect.

7. As already indicated, the question of harassment was raised in the complaint leading to Judgment 2742 but not then finally determined. The Tribunal noted that, by then, the complainant had filed a formal complaint of harassment with the Joint Grievance Panel and filed written submissions with it in support of her claim. The Tribunal indicated that principle "dictate[d] that a person cannot litigate the same issue in separate proceedings" and further noted that, although the complainant's claim of harassment was properly before the Tribunal, its determination should await consideration of the other complaints which had then been lodged. As neither party argues for any other course, it is appropriate to proceed on the basis that the claim of harassment stood over by Judgment 2742 is subsumed in Veiga No. 4. It will, however, be necessary to refer again and in some detail to some of the matters that were discussed in that judgment.

8. As noted in Judgment 2742, the complainant stated in her letter of 20 January 2006 requesting review of the decision to reassign her to the post of Chief of IAS, that she had been the victim of harassment since 2005 "in connection with the investigation of staff members involved in the fraud case". In rejecting her claim for review, the Secretary-General referred to her harassment claim and advised her "to check [her] perception […] with a colleague in the Organization, as indicated in Service Note No. 26/2003". The complainant raised her

claims of harassment in her internal appeal in written submissions dated 28 April 2006. Somewhat belatedly, she requested the Joint Appeals Board to refer her claims to the Joint Grievance Panel in accordance with Service Note No. 26/2003 but it declined to do so. On 16 September 2006 the complainant submitted a formal complaint of harassment to the Panel.

9. The Tribunal noted in Judgment 2742 that "[t]o a large extent WMO ha[d] not challenged the primary facts upon which the complainant relie[d] to establish harassment". Subject to some limited exceptions, the same is true in relation to the complaint arising out of the Secretary-General's decision of 28 September 2007 to close the case of harassment. In the main, WMO relies on the analysis undertaken by the Joint Grievance Panel. The complainant argues that that report is flawed, particularly in that the Panel did not adhere to the time limits referred to in the Service Note. However and to some considerable extent, the delays of which she complains were the result of procedural matters raised by her. Moreover, she contends that the Panel was not properly constituted because one member was the direct subordinate of the chairperson. That, of itself, does not indicate that the person concerned either could or would not act independently in the performance of his duty. There is, however, one matter that dictates that, rather than rely on the findings of the Joint Grievance Panel, the Tribunal should undertake its own analysis of the primary facts.

10. On 25 October 2006 the Secretary-General appointed the chairperson of the Joint Grievance Panel. At the same time he sent a letter to the chairperson setting out what he said was "some background information that [might] assist the Panel to determine the steps it [might] want to take in handling [the] case". WMO argues that, as the members of the Panel were not aware of the background to the case, that was an appropriate course. However, the Secretary-General made various statements that went beyond background information. For example, he stated that he had "concluded that [the complainant was] not capable of serving WMO with loyalty and professionalism", that she had "abus[ed] her functions as internal auditor" and that she

had "clearly stated that her harassment grievance [was] fundamentally aimed at reviewing and canceling the reorganization of internal oversight". Additionally, he expressed the view that "any new opportunity for her to interact with WMO management, especially in the context of her alleged harassment, [would] lead to new abusive allegations". He concluded by saying:

> "A file containing a full record of events is available to support [the case]. However, should you consider that additional information is required to deal with the case, may I suggest that rather than embarking on extensive written communications, [the complainant] and myself be given an opportunity to present in person our respective views. [...] this approach […] would […] avoid an unreasonable administrative burden to all those concerned."

In the result, the Panel interviewed neither the complainant nor the Secretary-General. It interviewed only one person and that was with respect to events that occurred in the IOO while the complainant was absent on sick leave. Moreover, it did not provide the complainant with an opportunity to comment on the answers of those whom the Panel had invited to respond to her claims. In this process, at least one document upon which the Panel relied for its recommendations, a report from Mr M., was not provided to the complainant. Indeed, it was only provided when it was exhibited to WMO's reply in Veiga No. 5.

11. Paragraph 24 of Service Note No. 26/2003 relevantly provides:

> "Upon receipt by the Chairperson of the alleged harasser's response [...] the Panel will begin to conduct an investigation […]. This will normally include separate interviews with the complainant, the alleged harasser, any alleged witness and any others who may be able to provide relevant information."

Whatever the precise meaning and effect of this provision, it does not authorise the Joint Grievance Panel to act on material that has not been provided to the person making the complaint or on any other material that that person has not had a chance to answer.

12. Service Note No. 26/2003 defines "harassment" as follows:

" Harassment can take many different forms. It includes, but is not limited to, the following which may occur singly, simultaneously or consecutively: -

- Repeated or persistent aggression, by one or more persons, whether verbal, psychological or physical, at the workplace or in connection with work, that has the effect of humiliating, belittling, offending, intimidating or discriminating against a person;
- Bullying/mobbing, which can include:

  I Measures to exclude or isolate a person from professional activities;

  II Persistent negative attacks on personal or professional performance without reason or legitimate authority;

  III Manipulation of a person's personal or professional reputation by rumour, gossip and ridicule;

  IV Abusing a position of power by persistently undermining a person's work, or setting objectives with unreasonable and/or impossible deadlines, or unachievable tasks;

  V Unreasonable or inappropriate monitoring of a person's performance; and

  VI Unreasonable and/or unfounded refusal of leave and training."

13. The matters on which the complainant relies in relation to her complaint of harassment fall into five broad groups. The first group comprises matters or events which occurred prior to February 2005, including lack of appropriate staffing, the failure of the Secretary-General to correct a newspaper report that was published in the New York Times, and the requirement that the complainant provide material to the Joint Disciplinary Committee considering disciplinary action against three staff members whose conduct had been referred to in one of her reports relating to the fraud. In Judgment 2742 the Tribunal stated with respect to all but one of these matters that they neither established the motive claimed by the complainant nor constituted harassment. There is no reason to revisit those findings. In one case, namely, with respect to the newspaper report, the Tribunal merely stated that that matter did not support the complainant's claims as to the motive of the Secretary-General. The Tribunal now finds that, as the Secretary-General may well have

wished to forestall further adverse publicity, that incident is incapable of supporting a finding of harassment.

14. The second and third groups involve events in 2005, commencing after February of that year when, as the Tribunal noted in Judgment 2742, "the relationship between the complainant and the Secretary-General underwent a marked change". The second group of events relates to reports of the complainant concerning the WMO senior legal adviser. The third relates to actions taken by the Secretary-General with respect to the proposed reorganisation of the internal oversight function.

15. As noted in Judgment 2742, the complainant became aware in late February 2005 that the senior legal adviser had made a call to the telephone of the main perpetrator of the fraud on the day of his escape to Egypt, albeit some five or six hours after his departure from Switzerland. His escape occurred the day before he was to be arrested by Swiss authorities. When first questioned, the senior legal adviser denied that she had made the call in question. Later, on 4 May 2005, the senior legal adviser informed the Secretary-General that the call had been unintentional and, later still – on 6 June 2005, according to the report of Mr M. that was not provided to the complainant – she sent a memorandum and other documents to him explaining how it had come to be made unintentionally. In the meantime and, presumably, based in part on the senior legal adviser's denial of the phone call, the complainant prepared an addendum report that referred to the adviser.

16. At this stage, it is pertinent to observe that some indication of what was said with respect to the senior legal adviser in the complainant's reports is to be found in the report of Mr M., who was subsequently engaged by the Secretary-General to advise on the dispute that had then developed. In his report, Mr M. refers to two statements in the complainant's first addendum report of 2 May, namely that the adviser:

> "failed to diligently and accurately fulfill her duties and responsibilities [...] by delaying the process of arresting [the main perpetrator] and giving him

> time to prepare [his] escape: her conduct has caused the WMO enormous prejudices both morally and financially"

and

> "hid the fact to the Judge, the Secretary-General and [the complainant] that she called [the main perpetrator] the day [he] escaped [...] as well as the intention of her telephone call [...]. These omissions have seriously damaged […] the regular course of the Swiss Justice inquiry. When she called [the main perpetrator] on 9 November 2003 she knew already that the Judge was going to issue the order to arrest [him] on 10 November 2003. She misused her authority and her office and consequently prejudiced WMO's reputation."

There are a number of matters to be observed with respect to these two statements. First, the statement with respect to delay was apparently based on the fact that the senior legal adviser had told the complainant that she had referred the case to the police, whereas she had referred it to the *Procureur général de la République et canton de Genève*. At that stage, the complainant erroneously believed that it should have been referred to the police and that its referral to the *Procureur général* had occasioned some delay. As earlier indicated, and more importantly, the addendum report of 2 May was prepared at a time when the adviser had denied making the call in question to the main perpetrator's telephone and the complainant knew that the call had been made. The third matter is that the complainant's statements assert neither that the actions of the senior legal adviser were deliberate nor that they were done with the intention of facilitating the main perpetrator's escape. This notwithstanding, it appears from the report of Mr M. that the statements were read as meaning that the senior legal adviser had "aided and abetted [the main perpetrator] to flee the jurisdiction [...] prior to his planned arrest" and, in effect, "accused […] [her] of acting so as to pervert the course of justice, which in most jurisdictions amounts to a serious criminal offence".

17. It may well be that the Secretary-General read the reports of the complainant in the same sense as did Mr M. On that basis, his attempts prior to 4 May 2005 to get her to change her reports cannot be seen as harassment, at least if they were directed to making it clear that the complainant was only referring to events that needed further

investigation. However, the same cannot be said for subsequent events. In early May, the Secretary-General provided the relevant parts of the complainant's reports to the senior legal adviser and to three members of the Joint Disciplinary Panel, although apparently not in that capacity. One of those persons was the Director of Resource Management. It is not clear in what capacity the Secretary-General consulted them but there can be no explanation for their involvement in subsequent events other than that their involvement was authorised by him. The complainant's claim that the Secretary-General did not inform her of "the existence and the modalities of this group" was rejected by the Joint Grievance Panel on the basis that she had not proved that allegation. Whether or not that is so, the group participated in the preparation of a document which, on 4 May, was given inadvertently to the complainant. There is no evidence that any member of the group suggested that the complainant make any particular amendments to her report. It was said in the document that the allegations against the legal adviser were "absolutely unfounded and reckless" and that the complainant's investigation had been "unprofessional" and her conclusions were "totally unacceptable". The Director of Resource Management subsequently demanded of the complainant that she return the document. The complainant says that he acted aggressively; he admits to having raised his voice. When the complainant raised the matter with the Secretary-General, he informed her that if she returned all the copies, the document would disappear. The Director of Resource Management, who was not her supervisor, wrote to the complainant on 19 May saying that he found her behaviour in not returning the document and in failing to confirm that no copies existed "unacceptable". In the end, the complainant kept one copy of the document and the Secretary-General acquiesced in that course. The Joint Grievance Panel found that, although the Director of Resource Management had raised his voice, his actions did not constitute harassment. However, it did not consider his actions in the wider context of their having been authorised by the Secretary-General.

18. As indicated in Judgment 2742, the senior legal adviser consulted a private attorney who wrote to the complainant on 10 May 2005. In that letter, reference was made to two statements in the complainant's report, namely:

> "Someone advised [the main perpetrator] to escape and [the senior legal adviser] could have been in the best position to be informed about the evolution of the judiciary process"

and

> "[the senior legal adviser] led the process in such a way that the timing was the longest one, allowing enough time for [the main perpetrator] to be informed and prepare [his] escape."

Additionally, reference was made in the letter to a statement that there was "a link" between certain named individuals, including the senior legal adviser, and the main perpetrator of the fraud and that the senior legal adviser had made a number of telephone calls to one of the individuals who was a close friend of the main perpetrator in the month before his escape. Although these statements and the other two set out above indicated the complainant's suspicions, they did not constitute accusations. Nevertheless, the attorney characterised them as such and threatened legal action if they were not withdrawn by 25 May.

19. On 12 May the complainant sought the Secretary-General's "instructions on how to proceed" with respect to the attorney's letter and added:

> "Since the very beginning of this investigation IAIS has always recommended that its legal implications, if any, should be evaluated and cleared by a specialized legal adviser before any action [is] taken. Once again, IAIS recommends the need for WMO to acquire specialized legal services to support the work of IAIS in connection with the investigation."

The Secretary-General responded on 13 May 2005 asking her to "clarify the type of services [she] require[d]" but providing no instructions or other guidance as to how to respond to the attorney's letter. On 18 May the complainant explained that she needed legal services to deal with the letter received from the attorney. On 23 May the complainant received a registered letter from the attorney in identical terms to the earlier one. The complainant informed the

Secretary-General of this and noted that she still had not received any instructions or legal guidance as to how to deal with the letter. She added that she had "been subject[ed] to personal attacks and [threats] to [her] position as C/IAIS" since February 2005 and that she had been "requesting [his] attention to help resolve them". There is no evidence that the Secretary-General replied to this letter. However, at or about this time, he contacted an external lawyer, Mr S., apparently with a view to his resolving the issues that had developed. Again, it must be taken that the Secretary-General expressly or impliedly authorised the subsequent actions of Mr S.

20. On 6 June 2005 the senior legal adviser provided documents to the Secretary-General directed to explaining, amongst other things, how she had unintentionally called the telephone of the main perpetrator on the day of his escape. The Secretary-General provided these documents to the complainant on 13 June together with a request that she review the material. The Secretary-General added that he assumed that she would wish to remove "corresponding" references to the senior legal adviser from her ninth and tenth reports. On the same day, the complainant met with Mr S. who had earlier informed her that he had been asked "to try to respond to the legal questions [she had] raised […] concerning the investigation". However, it is clear that, when they met on 13 June and subsequently, the focus of their conversations was the modification of her reports insofar as they concerned the senior legal adviser. It seems that, at some stage, Mr S. suggested that the Secretary-General could waive the complainant's immunity under Swiss law so that the legal adviser could bring proceedings in the Swiss courts. In an e-mail of 22 June, he stated that, even if the complainant had a defence under Swiss law, that would not apply to an internal appeal in which "the responsibility and any cost [was] likely […] to fall on [her]". The complainant replied the next day, stating, amongst other things, that she had no knowledge of an internal appeal having been initiated. Mr S. replied the same day saying that he had "made it quite clear that the Secretary-General would need to respond by the end of June to [the senior legal adviser's] appeal". The e-mail continued:

> "Our entire discussion was about whether you needed to comply with [the senior legal adviser's] request to the Secretary-General and to you that you remove the derogatory passages about her from your report.
>
> Your claim to have been unaware and to need more information to respond to the Secretary-General is unconvincing to me and seems at best disingenuous.
>
> I don't intend to be drawn further into responding to the kinds of false issues contained in your latest message."

21. Notwithstanding the tone of Mr S.'s e-mail of 23 June, the complainant replied politely the next day, pointing out that she had not been informed of an internal appeal and reminding him of the limited recommendations made in her reports with respect to the senior legal adviser. One of the two recommendations was that clarification be sought with respect to the call to the main perpetrator's phone on the day of his escape and an earlier call in August 2003 by the main perpetrator to the legal adviser's phone and that the legal adviser be kept aside from legal matters involving the investigation pending that clarification. The other was to obtain legal clearance "for all the implications of the conclusions [...] presented". Although in the end the complainant did not alter her reports, she provided an addendum dated 7 July stating, amongst other things, that the senior legal adviser was "co-operating and bringing new elements to help clarify the situation" but that she, the complainant, did not have the tools to verify the documents and other material supplied. She also made reference in that addendum to the legal adviser having provided confidential information, namely, parts of her reports, to her private lawyer and to another person who, apparently, was in a position to provide an innocent explanation for one of the complainant's concerns.

22. It is clear from the letter of the Secretary-General of 13 June 2005 that, by then, his aim was to secure the deletion of references to the senior legal adviser in the complainant's reports, rather than amendments that might make it clear that she was not accusing the adviser of criminal activity but that there were aspects of her actions that needed further investigation. It should also be noted that there is no evidence that the senior legal adviser ever instituted an internal

appeal. However, it emerges from the report of Mr M. that the legal adviser had requested that the allegations "be purged from the investigative files", a step which the Secretary-General was "minded to authorize". Mr M. expressed the view that if the Secretary-General did not do so, the adviser could bring proceedings in this Tribunal.

23. There are other aspects of Mr M.'s report that should be mentioned. Insofar as he concluded that the reports contained an allegation of perversion of the course of justice, he stated that there was insufficient evidence to warrant the accusation and that it was not a "tenable proposition" for the complainant to discount the legal adviser's explanation of her call to the main perpetrator on the basis that she lacked "the ability to disprove it". So far as concerns the complainant's statement in the addendum of 7 July with respect to the legal adviser's disclosure of parts of her report, he also stated there was insufficient evidence to warrant an accusation of disclosing confidential information. He stated that the complainant "erred both in raising the allegations and in the arrant manner in which [they] were expressed". However, Mr M. referred to a number of matters that he considered amounted to mitigation, including the complainant's lack of investigative experience, her lack of resources and the lack of direct and regular access to legal advice. In this last respect, he noted that the senior legal adviser "was conflicted as soon as it became apparent that she had made a telephone call to [the main perpetrator on the day of his escape]". He also made a number of recommendations. There is no evidence that those recommendations were acted upon and the matter seems to have resolved itself in October 2005 when the senior legal adviser left WMO for another organisation.

24. Whether or not the complainant's reports contained "allegations" with respect to the senior legal adviser – a matter on which minds may differ – the appropriate course was not to demand deletion of the references to her but to suggest a formulation that made it clear that the complainant only considered that her actions required further investigation. There is no evidence that that course was followed and, in the absence of evidence to that effect, the actions of

the Secretary-General in authorising, whether expressly or impliedly, the actions of the members of the Joint Disciplinary Committee and the Director of Resource Management, in failing to provide any instructions or guidance as to how the complainant should deal with the letters from the senior legal adviser's private attorney before the specified deadline, the subsequent conduct of Mr S. which, again, must be taken to have been authorised by the Secretary-General and which was neither appropriate nor entirely frank, are properly to be taken as constituting harassment on the part of the Secretary-General. The actions in question constituted repeated psychological aggression that had the effect of offending and intimidating the complainant. And they almost certainly had the effect, if not of themselves then in conjunction with the Secretary-General's unlawful decision to reassign the complainant to the post of Chief of IAS, of engendering her belief as to his motives.

25. The second group of events that occurred in 2005 and on which the complainant relies for her claims of harassment concerns proposals for change with respect to the internal oversight functions within WMO. As noted by the Joint Grievance Panel, the substance of her claims in this regard is that she was not involved in discussions on this issue. The first step in the process that led to the formation of the IOO was, apparently, a discussion in April 2005 between the Secretary-General and the Director of Resource Management on the one hand and, on the other, the Director of the Office of Internal Oversight (OIOS) of the United Nations in Geneva concerning the possibility of outsourcing those functions to the Director of OIOS. This apparently came to the complainant's knowledge in April when that possibility was discussed at a Geneva Group meeting. At or about the same time, she was asked to comment on a document that had been prepared by the Director of Resource Management for the WMO Executive Council. The document contained two alternative proposals, namely, "upgrading and reinforcement" of the IAIS with an additional post at director level or outsourcing to "a competent external provider". In a memorandum of 22 April 2005, the complainant commented that she was opposed to outsourcing and that

she could not analyse the other proposal as she had not been given the basis of the costings or the rationale for the proposed staffing and grades. She noted that the Director of Resource Management had told her that she could not be involved in the preparation of the proposal because she was "an interested party". She added:

> "I never heard about keeping the Chief of a Department aside from participating in the design of the reorganization of its own services."

26. As noted in Judgment 2742, at the Secretary-General's request, the complainant submitted her own proposals for the strengthening of the IAIS in May 2005. At its June 2005 meeting the Audit Committee was presented with three different proposals for strengthening the IAIS, none of which included the complainant's proposal. The complainant was neither involved in the preparation of those proposals nor asked to comment on them. The Committee did not express a preference for any of the three options presented and, in the result, requested the Secretary-General to strengthen the internal audit service on an urgent basis. Thereafter, the Secretary-General proceeded with his proposal to create a Director's post. The complainant was made aware of the proposal but not involved in its development. In July, the Secretary-General told the complainant that he was thinking of advertising the new post. At that stage, the complainant drew attention to the need to comply with the Financial Regulations and asked what would happen to IAIS staff. She was told, in effect, that the staff would be retained and that the creation of the new post would be a professional opportunity for her. Without reference to the complainant, plans were put in place to establish the new posts and to evaluate them. In September the Secretary-General told her that the post of Director of IOO would be advertised. When it was advertised on 6 October 2005, the complainant discovered that, in effect, the IAIS would be abolished.

27. The Joint Grievance Panel dealt with this aspect of the complainant's harassment claim on the basis that it was within the discretionary power of the Secretary-General not to take her comments into account and, also, to decide that she should not be involved in the

preparation of the documents for the Executive Council in April 2005. It also said that it "could not find any evidence that would support [her] serious and defamatory allegations [...] that her reassignment was part of a harassment campaign". What it did not consider was whether the exclusion of the complainant, at least with respect to proposals and developments from May 2005 onwards, constituted harassment. In regard to the document that was prepared by the Director of Resource Management for the Executive Council in April 2005, the Panel stated it "would have found it a normal Secretariat procedure to request [the Chief of IAIS] to contribute to the document in question". Equally, it must be taken to be normal practice in any international organisation, as suggested by the complainant in her memorandum of 22 April 2005, to involve the Chief of a Section or Department in plans for its reorganisation. Not to do so would, ordinarily, constitute a serious failure to respect the dignity of that person. That being so, the sustained exclusion of the complainant from the process of strengthening the internal oversight function from May onwards, constituted "measures to exclude or isolate [her] from professional activities", that being expressly comprehended within the definition of "bullying/mobbing" in Service Note No. 26/2003.

28. The complainant relies on other events in 2005, including the Secretary-General's delegation of authority with respect to internal oversight to the Assistant Secretary-General, his request that the Assistant Secretary-General present a paper that had been prepared by the complainant and the presence of the Assistant Secretary-General at her performance appraisal interview. It is sufficient to state that these were disparate actions, which appear to have been taken for reasons related to the proper management of the affairs of WMO. They do not, whether considered in isolation or in conjunction with other events, constitute harassment.

29. The fourth and fifth broad groups of matters on which the complainant relies in relation to her claim of harassment concern the actions of the Director of IOO and those of the Secretary-General in the year 2006. It is convenient to first deal with the actions of the

Director of IOO. At this stage, it should be noted that the Joint Grievance Panel concluded that certain of his actions constituted harassment. That conclusion was based on his having requested information from the complainant's subordinate at a time when she was Officer-in-Charge and, also, on his having sent her her work plan, a high and distressing number of work-related e-mails and having compelled other staff members to give him her protected home telephone number while she was absent on sick leave. In this last regard, the complainant was absent on sick leave from 27 February until 8 June 2006. The Panel rejected all other allegations with respect to the Director. The Secretary-General apparently misread the Panel's report as involving only a finding with respect to the request to the complainant's subordinate. He rejected the Panel's conclusion and recommendation that the Director be reprimanded on the basis that he, the Secretary-General, had asked the Director to obtain the information from the subordinate because it had been expected that the complainant would be on mission at the relevant time. However, the complainant did not then go on mission and the Director could easily have ascertained that she was in the office at the time in question. Even if he did not know this and was acting on the Secretary-General's instructions, common courtesy indicates that he should, at least, have sent an e-mail to the complainant informing her of what he was doing and why. Without going into detail, it is sufficient to note that those other actions of the Director of IOO while the complainant was on sick leave and which were identified in the Joint Grievance Panel's conclusions were quite inappropriate.

30. One of the other matters alleged by the complainant against the Director of IOO is that, after her return to work from sick leave, he did not meet or speak with her, that she was not introduced to the consultant who had been engaged by him and that she was isolated from other staff members and from information that was usually shared. The Panel found that the complainant had not produced evidence for these allegations. Apart from the failure of the Panel to interview the complainant and the difficulty of proving a negative, it was the Panel's duty to investigate these allegations rather than dismiss

them in the way it did. Moreover, and to some extent, the allegations were corroborated by an e-mail from the complainant to the Secretary-General on 30 June 2006 and by the Secretary-General's acknowledgement in the course of the Panel's proceedings that the Director could "perhaps have engaged [in] dialogue with [the complainant] in a different way". However, and more significantly, there was no evidence to the contrary from the Director of IOO who adopted a somewhat cavalier approach to the proceedings of the Panel. Thus, on 19 March 2007, he sent an e-mail to the Panel indicating that he "categorically den[ied] the allegations [...] of the complainant who [he] basically believe[d] [was] disgruntled for not being promoted to a director's post" and added that "[he found] it abusive to spend [his] valuable time answering to this type of illogical charge […] in light of [his] significant [...] workload and responsibilities". When not provided with further information requested by him on 20 March 2007, including whether any member of the Panel had "a legal background or forensic/investigatory experience", he declined to provide any further comment. Given these matters, particularly the Director's hostile attitude to the complainant as displayed in his e-mail of 19 March 2007, and the failure of WMO to adduce any evidence to the contrary, the Tribunal accepts that, as claimed by the complainant, the Director of IOO did not meet with or speak to her after her return from sick leave and, moreover, isolated her from her colleagues and from information that was normally shared.

31. There are two other matters that should be mentioned. The first is that in March 2006, while the complainant was on sick leave, the Director of IOO arranged for the lock on the complainant's office to be changed. Although he sent her a copy of the e-mail by which he made that arrangement and, shortly afterwards, a further e-mail explaining what he was doing and why, he did not give her any advance notice. It is unnecessary to consider the reasons given for changing the lock because, at the very least, the complainant should have been given advance notice of the action contemplated.

32. The second matter is that in March 2006, the Director of IOO countermanded a request by the complainant to one of her colleagues that she, the colleague, place her mail in an envelope and leave it at the reception desk for her husband to collect. In an e-mail to the complainant, the Director requested her to arrange for her personal mail to be readdressed to her home as the colleague in question was "extremely occupied with official business". The Joint Grievance Panel found the Director's actions in this regard "petty".

33. The complainant relies on other actions of the Director of IOO, including what she says was the setting of unreasonable deadlines, a letter that was sent to her when she arranged for certain files to be delivered to WMO by her husband instead of by DHL and requests in relation to an audit the complainant had commenced, known as "the Brazil audit". The Joint Grievance Panel found that the deadlines were short but that it was impossible for it to determine what time was required for the different tasks. That is a matter the Panel should have investigated in accordance with Service Note No. 26/2003. As it did not do so, it is now impossible for the Tribunal to determine the issue. As to the other two matters, they resulted from the complainant's lack of cooperation with the Director, particularly in relation to the Brazil audit – a matter that will be considered later in relation to the decision not to renew her contract. Leaving these incidents aside, however, the other matters that have been identified constituted harassment. In this regard, it may not be possible to characterise the actions in question as "aggression" within the definition of "harassment" in Service Note No. 26/2003 but that definition is neither exhaustive nor exclusive. The actions of the Director of IOO outlined above were repeated acts that failed to respect the complainant's dignity, particularly while she was on sick leave, and had the effect of offending and belittling her.

34. The fifth group of matters involving the Secretary-General's actions in 2006 includes the decision to reassign the complainant to the post of Chief of IAS, his failure to deal with her complaint of harassment in January 2006 and her subsequent complaint of

harassment against the Director of IOO, his failure to inform her as to her precise duties and responsibilities as Chief of IAS and to obtain a legal opinion as to what was included in them, his decision to transfer her as special adviser within the Department of Resource Management and his decisions of 25 October and 3 November not to renew her contract and to terminate her services with immediate effect.

35. So far as concerns the Secretary-General's failure to respond to the complainant's claims of harassment in January 2006 and, later, with respect to the actions of the Director of IOO, the complainant was advised of the existence of Service Note No. 26/2003 and, had she wished to pursue her claims at that stage, she should have proceeded in accordance with it. As the Secretary-General might in due course be required to take a final decision on those claims, including with respect to the persons of whose conduct she complained, his failure to act on her claims at that stage cannot constitute harassment.

36. The complainant's claims with respect to the failure of the Secretary-General to inform her of her precise duties and responsibilities as Chief of IAS and to obtain a legal opinion with respect to them must be considered in the light of her absence on sick leave from late February until 8 June 2006 and her indication when she returned to work that she was prepared to work as Chief of IAS. Until her return to work, the question of her precise duties and responsibilities had not arisen. And once the complainant indicated that she would perform the duties of Chief of IAS, for all practical purposes, she was obliged to observe the instructions and directions of her supervisor. Thus, these matters cannot constitute harassment. Nor is it possible to regard the transfer decision as harassment. As will later appear in relation to the decision not to renew the complainant's contract, she had breached confidentiality in relation to the Director of IOO by sending a copy of a complaint of harassment against him to members of the Audit Committee and had made it clear that she was not prepared to cooperate fully within the structure of the Internal Oversight Office. In these circumstances, her transfer to the Department of Resource Management had a "valid managerial

purpose" (see Judgments 2370, 2524 and 2745) and, thus, cannot be characterised as harassment.

37. It is not possible to characterise administrative decisions as harassment simply because they are unlawful. In this regard, it was pointed out in Judgments 2370 and 2745 that actions or decisions that result "from honest mistake or even [...] inefficiency" cannot constitute harassment. And if administrative decisions are taken for improper purposes, that is a matter that is more appropriately dealt with by way of moral damages, rather than on the basis of harassment. However, as the complainant has established harassment in relation to the actions that must be taken to have been authorised by the Secretary-General in relation to her reports concerning the senior legal adviser and, also, against the Director of IOO, the Secretary-General's decisions of 4 October 2006 and 28 September 2007 rejecting her claims must be set aside. In this regard, it should be noted that those claims were brought when the complainant filed submissions with the Joint Appeals Board on 28 April 2006 and, thus, within 60 days of the then most recent act of alleged harassment, as required by paragraph 22 of Service Note No. 26/2003.

38. Before leaving the question of harassment, two other matters should be noted. The first is that the complainant has relied on other incidents and events, but the Tribunal is satisfied that they were disparate events, that do not constitute harassment and, to the extent that those events occurred in 2005, the claims in respect of them were not brought within time. The second matter is that, although the actions of the Secretary-General in 2006 do not constitute harassment, not all his actions during that year are beyond criticism. In particular, he dismissed the complainant's claims of harassment on 4 October 2006 as "abusive and ill driven" when they had not then been considered by the Joint Appeals Board or the Joint Grievance Panel (see Judgment 2742) and he had written to the Chairman of the Joint Grievance Panel on 25 October in terms that were quite inappropriate. Those actions indicate both a disregard for his responsibility as the final decision-maker and disrespect for the complainant's right to have her claims of

harassment properly considered. Moreover he did not give the complainant an opportunity to answer the matters on which he based his decisions not to renew her contract and later to terminate her services with immediate effect. That was a serious breach of her rights (see Judgment 1639). The Tribunal will now deal with those decisions.

39. Because of its pivotal role, it is necessary to deal first with the complaint relating to the termination of the complainant's services with immediate effect (Veiga No. 5). However, certain issues are common to that decision and the earlier decision of 25 October 2006 not to renew her contract. Thus, to some extent what follows is pertinent to both decisions. The first issue is to determine the position held by the complainant at the time of those decisions.

40. It was held in Judgment 2742 that the decision to reassign the complainant to the post of Chief of IAS was taken unlawfully because the WMO Financial Regulations, as they then stood, mandated the continued existence of the IAIS. The Regulations also directed that the Chief of IAIS, the position to which the complainant was appointed, not be separated from service without prior consultation with and the approval of the President of WMO acting on behalf of the Executive Council. The Regulations were not amended until May 2007 to provide for the abolition of the IAIS and the creation of the IOO with effect from 1 January 2008. The complainant contends that she was still Chief of IAIS when the decisions were taken not to renew her contract and, later, to terminate her services with immediate effect. According to her argument, as the President of WMO was not consulted and, thus, did not give his approval to those decisions, both decisions must be set aside.

41. The decision to abolish the IAIS was an organisational decision and was taken without lawful authority. Accordingly, it must be regarded as a nullity. At least that is so until the amended Financial Regulations took effect in January 2008. It follows that, as a matter of law, though not as a matter of fact, the IAIS continued to exist until January 2008. Moreover, as the complainant, and no one else, was

appointed to the position of Chief of IAIS and as she was not lawfully removed from it, she was the only person who could properly claim to perform the functions and duties associated with it until the amended Regulations took effect.

42. For some time following her reassignment, the complainant claimed to be Chief of IAIS, and not Chief of IAS. Indeed, she so described herself in e-mails and other correspondence until late June 2006. However, on 10 June 2006 she forwarded an e-mail to the Director of IOO stating, amongst other things:

> "While I respectfully maintain that the decision by the Secretary-General to abolish IAIS and reassign me to a newly created position is illegal [...] I accept to act in accordance with his administrative decision pending the determination of my appeal, i.e. as [Chief of IAS] only. In this situation and position, you will understand that I am not able to accept any responsibility over activities connected with the abolished position [Chief of IAIS]."

In an earlier paragraph in that e-mail, the complainant identified the responsibilities and duties connected with the post of Chief of IAIS as those "attached to the fraud investigation, Brasil [sic] audit, the complaints received through the 'Communication line' etc".

43. In a later e-mail to the Secretary-General, on 30 June 2006, the complainant stated, amongst other things:

> "I would like to kindly and formally request you to acquire a founded legal opinion regarding my current responsibilities under the job description [Chief of IAS] so that I can fulfill all my duties with the assurance that I am not acting in contravention with your decision to remove me from the position [Chief of IAIS] and reassign me to this current new position [Chief of IAS]. Please note that, until I will be provided with such founded legal opinion and clarification, I will not start to perform any activities connected with my previous position [Chief of IAIS]."

No such opinion was provided and, as earlier indicated, the complainant was transferred in July 2006 to the position of Special Adviser REM.

44. Whatever may have been her position prior to 10 June 2006, it is clear that, thereafter, the complainant did not exercise any of the functions of Chief of IAIS. Although the decision to reassign her to the

post of Chief of IAS was illegal, it does not follow that the creation of that post was illegal. The Secretary-General had no authority to abolish the IAIS but it was within his power to create new posts. Given the complainant's assertion that she would not perform any functions associated with the post of Chief of IAIS but that she would perform those of the newly created post, she is properly to be treated as occupying the latter post from 10 June 2006 at least until 25 October 2006, when she was informed that she would remain as Special Adviser REM until her contract expired. Certainly, she cannot properly be regarded as occupying the post of Chief of IAIS at any time after 10 June 2006. It follows that the argument that the decisions of 25 October and 3 November are invalid because they did not comply with the Financial Regulations relating to the post of Chief of IAIS must be rejected.

45. The decision of 3 November 2006 can only be analysed in the context of the earlier decision of 25 October 2006 not to renew the complainant's contract. As earlier indicated, that latter decision was taken after the rejection of the complainant's internal appeal with respect to her assignment to the post of Chief of IAS. In his letter of 25 October, the Secretary-General stated that he had taken into account "the report of the J[oint] A[ppeals] B[oard] and other relevant elements, in particular [her] conduct since the process of reorganization of internal oversight started". The stated grounds for the decision were:

- although the Executive Council had decided in July 2005 to close the internal investigation into the fraud perpetrated on WMO "unless further substantial information became available", the complainant had persistently alleged that the creation of IOO was aimed at preventing her from accomplishing her "professional duties in relation to the fraud investigation";
- she had abused her prerogatives as internal auditor to defend her personal opinion despite instructions to the contrary, including by communicating with the Audit Committee and some members of the Executive Council concerning the

restructuring and, also, with respect to her claim of harassment against the Director of IOO;

- she had hardly produced any work since the decision to assign her to the post of Chief of IAS but, instead, had overwhelmed "internal administrative bodies and [the Secretary-General] with communications showing a total lack of respect for [...] [her] colleagues, the management team and the Organization as a whole".

In the same letter, the Secretary-General added:

> "Although [the matters instanced] justify the termination of your contract under chapters IX and X of the Staff Rules, I have decided to let your contract expire, as you may not have realized yet that at no moment you have been serving the interests of the Organization, but rather looking after your own. Please note, however, that I will not hesitate to terminate your contract earlier if instead of concentrating on the work for which you are paid you persist in your behaviour."

46. On 27 October 2006 the complainant requested the Secretary-General's reconsideration of "the administrative decisions and of the content of [his] memorandum [of 25 October 2006]". She specified 11 matters that she characterised as decisions. Two, only, of those matters are properly described as administrative decisions, namely, the decision not to renew the complainant's contract and the decision not to return her to the post of Chief of IAS. However and save for one matter, they accurately reflected the findings, conclusions or other statements contained in the Secretary-General's memorandum of 25 October 2006. The exception relates to the statement by the Secretary-General of his assumption that the complainant would agree that, under the circumstances, there was no point in completing her performance appraisal for the period October 2005 to October 2006. This the complainant characterised as "a decision not to complete [her] performance appraisal report [...] in accordance with the Staff Rules".

47. On the same day, 27 October 2006, the complainant wrote two further letters to the Secretary-General. The first was with respect to her appeal against her performance appraisal for the period 1 January 2004 to 31 October 2005. The second concerned her claim

of harassment which the Secretary-General had said was "abusive and ill driven" in his decision rejecting her internal appeal with respect to her reassignment as Chief of IAS. In her letter concerning her complaint of harassment the complainant said:

> "[...] I note that you have already given your initial reaction even before the [Joint Grievance Panel] had the opportunity to start its work. Such a procedure is completely in contravention of both Service Note 23/2006 and Articles 16, 20, 21, 22, amongst others of the STANDARDS OF CONDUCT FOR INTERNATIONAL CIVIL SERVICE and cannot be accepted."

On 31 October 2006 the complainant wrote a further letter to the Secretary-General requesting documents and other information that she said were required for her appeals.

48. The memorandum conveying the Secretary-General's decision of 3 November 2006 is headed "SUMMARY DISMISSAL". In that memorandum, the Secretary-General pointed out that, on 25 October, he had given the complainant "formal notice of non-renewal of [her] contract […], the reasons for it as well as a last warning that [he] would not tolerate any longer such behaviour". The behaviour referred to was identified in that letter as her "insinuat[ion] that inappropriate actions on [his] part had been the driving force for the changes in internal oversight and [her] separation from investigation and audit functions", as well as her statement at their meeting on 12 October that "[he] had a responsibility to solve [her] work disputes". He added that "[he] ha[d] been clear enough in the past year that the tone and content of [her] communications as well as [her] constant defiance of [his] authority and decisions were unacceptable". He claimed that "[i]nstead, [she] ha[d] chosen to exacerbate [her] conduct". He concluded his reasons for summary dismissal by saying:

> "You also refuse to understand that while you may disagree with management decisions, there is a way to make those views known. Your right of appeal is not incompatible with your obligation to accept my authority and abide by my decisions and the standards of conduct. I have no right to keep in service a person who is determined to harm the reputation of the organization and its staff. It is also inconceivable to keep in service someone who claims to suffer every day that she has to bear the authority of

> a group of persons she despises and accuses of constant harassment. The only solution for this unfortunate situation is your summary dismissal with immediate effect."

49. It is not disputed that a WMO staff member may be summarily dismissed for serious misconduct. Moreover, that is the only ground relied upon by the Organization in support of the decision of 3 November 2006. In the internal appeal proceedings, as in these, it was argued that that decision was justified by the same conduct and unsatisfactory work performance that was relied upon for the decisions of 25 October not to renew the complainant's contract and not to return her to the post of Chief of IAS, in conjunction with her conduct after receipt of the letter advising her of those decisions. The first question that arises is whether the Organization can rely on the matters that were relied upon for the earlier decisions.

50. It is fundamental that a person not be punished twice for the same conduct or, more precisely for present purposes, that he or she not be subject to two separate and distinct adverse administrative decisions for the same conduct (see Judgment 934). As the complainant was subject to an adverse administrative decision, namely, a decision not to renew her contract on the basis of the matters relied upon in the Secretary-General's letter of 25 October 2006, it follows that the complainant's summary dismissal can be supported only on the basis of different conduct which, itself, amounted to serious misconduct or that, in some way, gave an added dimension to the conduct specified in the letter of 25 October so that it took on a more serious nature than previously was the case.

51. Under the heading "The Proof of a Pattern of Continuous Misconduct" in its reply in Veiga No. 5, the Organization relies on the following matters in addition to the matters specified, albeit in general terms, in the Secretary-General's memorandum of 25 October 2006:

- The complainant's reporting sick half time almost immediately after receipt of the memorandum of 25 October.

- The complainant's letter of 27 October requesting reconsideration of the decisions of 25 October which, it is said, contained "no information whatsoever as to the reasons why she disagreed with the Secretary-General's decision and reasons for it". Instead, according to the argument, she "repeated insults she had been asked to stop". In this last regard, WMO refers to the complainant's statement that the decisions of 25 October were "clear examples of abuse of power [...] confusing [the Secretary-General's] personal interests with those of WMO" and her statement that she reserved "the right to be assured that all […] decisions [...] [were] taken in strict accordance with the Staff Regulations, Staff Rules and the Standards of Conduct for the International Civil Service". Additionally, WMO relies on her statement that "an honest analysis of the cases which have never been fully investigated including the highest members of the WMO executive management make[s] clear the illegal action you have taken in my case and the grounds for such action". This, it is argued, conveyed the message that she did not consider the investigation closed and that she would abuse the information that she had to pursue her grievances.
- The complainant's letter with respect to her performance appraisal appeal in which, according to the argument, she ignored the procedural advice that had been given to her and urged in "totally inappropriate terms and tone" that she be allowed to submit her grievance directly to the Tribunal.
- The complainant's letter with respect to her harassment complaint which, it is put, was in similar terms.
- The complainant's letter of 31 October 2006 concerning the production of documents in which, it is said, she "reiterate[d] her threats" by stating that she "continue[d] to believe it [was] still possible to find a solution that better serve[d] and safeguard[ed] the interests of WMO and [her] own".

52. It cannot be contended that the complainant's taking sick leave constitutes misconduct or in any way adds to the seriousness of matters relied upon by the Secretary-General in his memorandum of 25 October 2006. Her need to work half time was certified by a medical practitioner and she had been ill for some considerable time earlier in the year.

53. The complainant's three letters of 27 October 2006 concerned internal review and appeal proceedings. They were written to the decision-making authority and there is no evidence that they were copied to anybody else. Necessarily, a staff member has some latitude in the manner in which he or she seeks review of an adverse administrative decision, that being the first step in the internal appeal process, and in the formulation of an appeal. That does not justify the use of gratuitously offensive language. Ordinarily, the statement that the Secretary-General was confusing his own interests with those of the Organization would be regarded as gratuitously offensive. However, it is to be remembered that the Secretary-General had already rejected the complainant's claims of harassment as "abusive and ill driven" even though they had not been investigated and, in his letter of 25 October 2006, he had accused her of abusing her prerogatives as internal auditor and of not "serving the interests of the organisation, but rather looking after [her] own". In this context, and although the issue could have been more appropriately expressed, the statement in question cannot be regarded as misconduct, much less serious misconduct.

Further, the Organization has taken the statement that "an honest analysis of the cases which have never been fully investigated [...] make[s] clear the illegal action you have taken in my case and the grounds for such action" out of context. That statement was part of the complainant's claim that she had been treated in a discriminatory manner when compared with staff members who had been censured in consequence of the fraud perpetrated within WMO and those whose actions had not been fully investigated, an argument that she was entitled to make. Further, the statement does not indicate that she did not consider the investigation closed but, rather, that she accepted that

it was. Moreover, the statement does not imply that the complainant would abuse the information she had to pursue her grievances. She was entitled to seek review of the adverse administrative decisions in question and to use whatever material was available to her in support of her claims that those decisions involved an abuse of power and were discriminatory.

54. In the context of a request for review of adverse administrative decisions, the complainant's statement that she reserved the right to be assured that all decisions complied with the Staff Regulations and Rules, as well as with the Standards of Conduct for the International Civil Service, is simply a reservation of her right to argue that they did not. Particularly is that so when the Secretary-General had not given her a proper opportunity to answer the matters upon which his decision was based and had not pointed to the Regulations or Rules pursuant to which he had taken the decision not to return her to the post of Chief of IAS.

55. It is necessary to provide some background with respect to the complainant's letter of 27 October 2006 concerning her performance appraisal appeal. The complainant had earlier filed an internal appeal with respect to her performance appraisal report for the period 1 January 2004 to 30 September 2005. A Joint Appeals Board heard that appeal at the same time as her appeal with respect to her reassignment to the post of Chief of IAS. The Board held that her appeal with respect to the report was premature as it had not been first referred to the Review Board, a finding upheld by the Tribunal in Judgment 2743. As appears from that judgment, the Secretary-General informed the complainant on 4 October 2006 that he would refer the report to the Review Board if she so wished. She did not elect to take that course. Instead, on 11 October, she wrote to the Secretary-General, apparently asking him either to take a decision not to refer the report to the Review Board so that she could file a complaint with this Tribunal or, in the alternative, to refer the report to a Board composed of members other than those previously appointed to it. She wrote again on 27 October, indicating that she had received no reply to that letter

and concluded by asking that, unless the Secretary-General was willing to rectify the error made, he take a final decision not to refer her report to the Board. She justified her request on the basis of the various "open matters" relating to her employment and his recent indication that he did not intend to make any further appraisal of her work.

56. Although the complainant was entitled only to have her performance appraisal referred to the Review Board and notwithstanding that the Secretary-General had not made a final decision with respect to a further performance appraisal, there is nothing in the tone or language of her letter which could be construed as misconduct or as aggravating earlier conduct relied upon for the decision not to renew her contract. Moreover, it is by no means clear, as claimed by the Organization, that she had been provided with and ignored procedural advice.

57. In its reply in Veiga No. 5, the Organization misstates what was said by the complainant in her letter of 27 October with respect to her harassment complaint, taking the view that her statement that the procedure adopted by the Secretary-General was contrary to Service Note No. 23/2006 and various Articles of the Standards of Conduct for the International Civil Service referred to a letter sent by him to the Chairman of the Grievance Panel on 25 October. As has been seen, the Secretary-General did write such a letter but there is no evidence that the complainant knew of that letter on 27 October 2006. Rather, it is clear that her statement referred to his memorandum of 4 October 2006 in which he said that he considered her claim of harassment "abusive and ill-driven". As her claim had not then been considered either by the Grievance Panel or the Joint Appeals Board, that statement ought not to have been made. The complainant was fully entitled to complain of that statement. Further, the terms in which she complained were not offensive.

58. The final additional matter upon which the Organization relies for the decision of summary dismissal is what it characterises as a "reiterat[ion] [of] her threats" in that she said in her letter of

31 October seeking the production of documents that she "continue[d] to believe it [was] still possible to find a solution that better serve[d] and safeguard[ed] the interests of WMO and [her] own interests". To characterise that statement as a threat is not only to misuse language but to ignore the fact that, following the meeting of 12 October, the complainant's legal adviser had discussed the possibility of settlement on two occasions with the Organization's legal counsel.

59. It follows that the matters relied upon by the Organization in addition to those relied upon for the decision not to renew the complainant's contract, whether considered separately or together, do not constitute misconduct, much less serious misconduct. And as they do not constitute misconduct, they do not give a more serious aspect to the matters relied upon for the non-renewal of the complainant's contract. That being so, the Secretary-General's decision to reject the complainant's appeal with respect to the decision of 3 November 2006 must be set aside, as must that decision, itself. The question of further relief will be considered later.

60. As the summary dismissal decision must be set aside, it is necessary to consider the complaint dealing with the decision of 25 October 2006 not to renew the complainant's contract and not to return her to her position as Chief of IAS (Veiga No. 7). The Organization contends that the decision not to renew her contract was justified by what is described in its reply as a "pattern of continuous misconduct" which, it is said, was motivated by her bad faith in making allegations of improper motive in relation to the decision to reassign her to the post of Chief of IAS. The complainant denies the various matters asserted against her in the memorandum of 25 October 2006 and also contends that the decisions embodied in that memorandum constitute a disciplinary sanction taken in breach of procedural safeguards and in breach of the Staff Rules, were the result of bias, malice and ill will, involved discrimination and constituted retaliation for her investigation of the fraud. It is convenient to deal first with the matters upon which the Organization relies for justification of the decision.

61. The first group of matters on which the Organization relies and, to some extent, the second appear to be directed to the statement in the memorandum of 25 October that the complainant had persistently alleged that the creation of IOO was aimed at preventing her from discharging her duties in relation to the fraud investigation and, also, the statement that she had overwhelmed administrative bodies and the Secretary-General with communications showing a lack of respect for her colleagues and for management. The first group consists of communications or statements with respect to her grievances and appeals, whilst the second consists of communications with members of the Audit Committee.

62. In the first group of matters, WMO points to the complainant's allegations of harassment "with no supporting evidence" in her request for review of the decision to reassign her to the post of Chief of IAS and, in particular, her statement that:

> "This is a very serious matter and it is in the best interests of WMO to resolve it, before the situation worsens."

Given that the complainant was, indeed, the victim of harassment, it cannot reasonably be argued that the complainant's claim in that regard in January 2006 or the terms in which it was expressed constitutes misconduct.

63. The second matter to which the Organization refers in the category of statements relating to the complainant's grievances and appeals is a statement by her legal adviser on 25 January 2006 that his client's concerns were well founded and that it would be in everyone's interest to discuss the matter. At a subsequent meeting, he indicated various bases on which the matter might be settled and said that, if WMO did not wish to deal with unpleasant appeals and interventions outside the Organization, it was in its interests to find her a suitable position in another organisation. Again, this cannot be viewed as misconduct. The reassignment decision was illegal and it was entirely predictable that subsequent appeal proceedings would prove awkward to the Organization, no matter on what basis the decision was challenged.

64. WMO also relies on the complainant's appeal with respect to her performance appraisal report which, it is said, "gave rise to an overwhelming exchange of correspondence". In this regard, the exchange of correspondence may have been vexing, but it cannot be said to constitute misconduct.

65. Additionally, WMO points to the complainant's internal appeal with respect to her reassignment in which she claimed that "the Secretary-General unlawfully and through an abuse of authority changed the structure of [the] internal audit and investigation service to remove [her] as [Chief of IAIS] and to take over the investigation files". As held in Judgment 2742, the decision was unlawful. And although the Tribunal ruled in that case that the evidence did not support the inference that the decision was motivated by an improper purpose of the kind asserted by the complainant, there is no evidence that, at that stage, she did not honestly hold the view for which she argued in her internal appeal and, subsequently, in her complaint to the Tribunal. After all, she had been the victim of harassment and had been subject to the unlawful decision to abolish the IAIS and to reassign her to the post of Chief of IAS.

66. The Organization also relies on conduct by the complainant in September 2006 in relation to her claims of harassment. In this regard, the complainant stated in a letter to the Secretary-General of 14 September 2006 that her harassment claims were serious and could, if necessary, be established in further appeals. She stated that it was not her desire to continue the matter if a mutually satisfactory solution could be found and added that:

> "[a]ny such appeal would necessarily deal on a factual level with […] a number of decisions taken by WMO administration management, which directly affected my professional position, reputation, standing and dignity as an international civil servant."

Additionally, on 20 September 2006, the complainant wrote to the Secretary-General asking him to declare invalid the proceedings of the Joint Appeals Board with respect to her reassignment because of its failure to refer her claims of harassment to the Joint Grievance Panel.

The Secretary-General replied the same day stating that he would consider her request when he received the Board's report and that "the volume and frequency of [her] communications [were] abusive". Apparently, there were further communications, including an e-mail on 26 September in which the complainant asked to speak to the Secretary-General as she believed it was possible to "find a way to settle all the matters pending internally, this also in case [he] consider[ed] it serve[d] the best […] interests of [the Organization]". These communications are incapable of constituting misconduct. Equally incapable of constituting misconduct on the part of the complainant are the communications between the legal advisers of the complainant and the Organization that took place following the meeting of 12 October and prior to the decision not to renew the complainant's contract on 25 October 2006.

67. To this point, the various matters relating to the complainant's internal appeals have been dealt with individually. However, WMO makes a further argument, namely, that the actions were taken in bad faith and involved "[b]lackmailing methods". In this regard, it points out that the complainant was an applicant for the position of Director of IOO and, even, prepared a work plan for the IOO in December 2005 for consideration by the Audit Committee in February 2006. It contends, in this context, that the real reason for her actions was to bring "pressure to obtain the promotion that she believed she was entitled to". As noted in Judgment 2742, only by applying for the newly created position could she protect her own position. Moreover and as earlier indicated, although the Secretary-General could not lawfully abolish the IAIS, he could create new posts. If appointed Director of IOO, there was no necessary inconsistency between the complainant occupying that post and discharging the functions of the post of Chief of IAIS. Indeed, the problem was that because the Financial Regulations had not then been amended no other person could discharge those functions. That was a point made by the complainant in a report that she prepared for the Audit Committee in February 2006 and to which further reference will shortly be made.

68. It is not possible to categorise any of the matters to which the Organization has referred and which have been dealt with above as involving bad faith, threats or blackmail. The complainant had been reassigned unlawfully to the post of Chief of IAS and had been the victim of harassment. The conduct constituting harassment did not reflect well on senior members of the Administration. It was legitimate, in the search for a mutually acceptable solution, to state that appeals would involve delicate issues. It follows that the first group of matters on which WMO relies for the decision of 25 October 2006 cannot be said to constitute misconduct.

69. As already indicated, the second group of matters upon which WMO relies in its reply concerns the complainant's communications with the Audit Committee. On 31 January 2006, before the complainant's reassignment, she forwarded an e-mail to all members of the Audit Committee, with a copy to the Secretary-General, saying that she was preparing a report on the abolition of the IAIS and the creation of IOO. On 6 February the Secretary-General expressed his surprise at her having sent that e-mail and stated, amongst other things:

> "Please clarify what you mean and note that documents to Audit Committee members should be submitted through the Secretary-General."

On 8 February the complainant provided the Secretary-General with the report in question and requested him to transmit it to the Committee. She also indicated that she would be prepared to discuss the matter with him in order to find a solution. In the report, she stated, correctly as it now transpires, that the abolition of the IAIS was illegal, as was the abolition of the post of Chief of IAIS, and correctly pointed out that the Director of IOO would "not be vested with the authority to enforce compliance with WMO Regulations". She concluded her report by stating that she considered that she was still Chief of IAIS and that:

> "The gravity of the facts presented […] as well as the systematic violations of WMO Regulations and the Standards of Conduct for the International Civil Service […] should be of primary concern and interest to the Audit Committee as well as to the Secretary-General and […] Congress."

70. The Secretary-General did not respond to the complainant's invitation to discuss the matter and, apparently, did not transmit her report to the Audit Committee. Instead, he wrote to her the following day stating that the report indicated that she had "a clear and serious conflict of interest" and, in consequence, he directed her to "refrain from [...] further involvement in all internal audit functions regarding the reorganization of the internal audit services". He added:

> "Finally, as an international civil servant, you may not properly approach member country representatives in opposition to my decisions, but must restrict yourself to the proper internal channels. It is my duty to warn you of the potentially serious consequences of failure fully to respect the duties of an international civil servant, in particular those mentioned above."

71. On 23 February 2006 and in spite of the specific warning given by the Secretary-General on 9 February, the complainant sent an e-mail to all members of the Audit Committee attaching her report, with copies to representatives of the State Department of the United States of America. It is not now in issue that the members of the Executive Council to whom that report was sent were, also, members of the Audit Committee. The copying of the e-mail to representatives of the State Department is a separate and serious matter to which further reference will shortly be made. In her e-mail, the complainant stated that the abolition of the IAIS was unlawful and that the new structure would weaken, not strengthen, the internal audit service. The Organization points not only to the sending of the e-mail but, in particular, to a statement that the restructuring of the internal audit service followed the fraud investigation which "appeared to [the Chief of IAIS] and […] the local magistrate [...] to involve a number of persons, some highly placed in WMO". She added that:

> "Despite strong written recommendations of [the Chief of IAIS] that such persons be sanctioned and/or prosecuted […] the Secretary-General did not lift the immunity for prosecution, such lifting according to the Investigating Judge is crucial to fully investigate the case, in such case the Judge does not have interest in pursuing the criminal investigation."

Strictly, the latter part of that statement is correct in that the Secretary-General waived immunity from prosecution only in respect of the main perpetrator of the fraud. However, that part of the statement was

apparently treated as meaning that the Secretary-General had refused to lift immunity as and when requested by the investigating judge. As members of the Audit Committee may have understood the statement in the same sense, it is convenient to proceed on the basis that it conveyed the meaning for which WMO contends. On that basis, it argues that the complainant knew at the time that her allegations were false. Additionally, it contends that the statement was made maliciously and was an abuse of her position as Chief of IAIS in that she knew that "any allegation, no matter how preposterous [...] could […] not be ignored by Governance".

72. Even on the basis that the statement with respect to the lifting of immunity from prosecution has the meaning that the Secretary-General did not waive immunity from prosecution as and when requested by the investigating judge, it is not possible to conclude that the complainant knew that it was false and, thus, abused her position as auditor. In its reply WMO points to a footnote in the complainant's final investigation report of June 2005 to establish that she knew that her statement with respect to the lifting of immunity was false. In that footnote she stated:

> "The Secretary-General has waived the immunities of both documentation and staff as soon as it was necessary or specifically required by the Judge."

It is clear that the statement in the e-mail to the Audit Committee relates to immunity from prosecution, rather than witness immunity. It is not clear that the footnoted statement refers to other than witness immunity.

73. There are other matters which should be noted with respect to the complainant's communication with members of the Audit Committee on 23 February 2006. The first is that the statements upon which the Organization relies do not allege that the creation of the IOO was motivated by a desire to prevent the complainant from carrying out her investigative functions as Chief of IAIS, that being the relevant charge in the memorandum of 25 October 2006. The second is that, insofar as the complainant said that it appeared to her and the investigating judge that others, including some highly placed, were

involved in the fraud, there is no evidence that that was not her honest opinion. Indeed, it is reasonable to assume that the fraud in question, involving in the order of 3 million United States dollars, could not have occurred without at least negligence on the part of persons other than the main perpetrator.

74. Moreover, there is a further consideration that has to be borne in mind in relation to the characterisation of the complainant's communication with members of the Audit Committee on 23 February 2006 as an abuse of her position as Chief of IAIS. As earlier indicated, although the complainant had by then been reassigned to the post of Chief of IAS, the IAIS continued to exist and she was the only person who could make any claim to exercise the functions and duties of that position. That being so and given that the Secretary-General had not indicated that he would transmit her report to the Committee, as she had requested, or discuss it with her, she had a legitimate interest in conveying her views with respect to the restructuring of the internal audit service to members of the Audit Committee and they had a legitimate interest in receiving them. Thus, although her actions in that regard were contrary to the specific instructions of the Secretary-General and constituted misconduct, there is no basis for the claim of abuse of her position as Chief of IAIS.

75. To say that the complainant's e-mail of 23 February 2006, insofar as it was sent to members of the Audit Committee, was not an abuse of her position as Chief of IAIS is not to say that her actions are without criticism. As already indicated, her actions were contrary to the specific instructions of the Secretary-General. Further, the statement with respect to the lifting of immunity might have conveyed the meaning that the Secretary-General had refused requests from the investigating judge to lift immunity from prosecution and greater care should have been taken in its expression. Moreover, although there was a legitimate interest in conveying her views as to the lawfulness and wisdom of the restructuring to members of the Audit Committee, the same cannot be said with respect to representatives of the State Department. Her conduct in copying the e-mail to them constitutes

misconduct – perhaps, even, serious misconduct. Certainly, it was in breach of Articles 25 and 33 of the Standards of Conduct for the International Civil Service. In other circumstances, the copying of the e-mail to members of the State Department, standing alone, would justify the decision not to renew the complainant's contract. However, it is not a matter that was expressly relied upon by the Secretary-General for his decision of 25 October 2006. Even if it was relied upon implicitly, it is impossible to conclude that, if due regard had been had to the harassment suffered by the complainant and to the fact that she had been unlawfully removed from her post as Chief of IAIS, the communication with members of the State Department would inevitably have led to the decision not to renew her contract.

76. The second communication with members of the Audit Committee, and one which was expressly relied upon in the memorandum of 25 October 2006, concerns a letter she forwarded to the Secretary-General on 10 May 2006, with copies to the members of the Audit Committee, the President of WMO and its external auditor. In that letter she alleged harassment on the part of the Director of IOO and indicated that the security of her office and, thus, of the investigation files had been breached. The heading of the letter included the statement "Grievance for Harassment" and, in the first paragraph, she stated that she was forced "to file a formal grievance for harassment" against the Director. Although there may have been a legitimate interest in conveying information about the security of the investigation files to the Committee, the forwarding of copies of that letter to persons other than the Secretary-General was an affront to the privacy and dignity of the Director and, again, may well constitute misconduct and, even, serious misconduct.

77. The third group of matters relied upon by the Organization in support of the decision of 25 October 2006 relates to what is described in its reply as "[i]nsubordination and dereliction of duties", a charge not made in the letter conveying that decision. Under this topic, the Organization refers, without particulars, to the complainant's "continuous contempt [for] the Secretary-General's

authority [and] inappropriate tone and language used in her communications with him". Presumably, the latter is a reference to her communications with the members of the Audit Committee and Executive Council and to the correspondence relating to her appeals and requests for review of adverse decisions, which matters have already been dealt with. On this basis, they need not be further considered. Additionally, the Organization particularises what it says are "three major examples" of insubordination.

78. The first "major example" of insubordination concerns her absence from work during the fifth meeting of the Audit Committee on 27 and 28 February 2006. Her request for annual leave for the days in question had previously been refused, but not for the period leading up to the meeting. The complainant sent a medical certificate on 29 February stating that she was incapacitated for work for one month commencing on 27 February. Her sick leave was later extended to 8 June 2006. It is not contended that the complainant was well enough to attend work on the days in question and there is evidence that she had been suffering from a stress-related illness since May 2005. In these circumstances, the only matter of which the Organization can complain is the complainant's failure to provide a medical certificate on 27 February.

79. The second example of "insubordination" concerns the location of the personal property of the main perpetrator of the fraud. On 24 May 2006, while the complainant was on sick leave, the Director of IOO requested information as to its location so that it could be provided to Swiss authorities without delay. The complainant returned to work half time on 8 June but did not disclose the location of the property until some weeks later. The complainant offers various explanations for this failure, including that the Director had no right to possession of the items in question, as he had never been appointed to the IAIS.

80. The third example concerns the Brazil Audit. The complainant informed the Director of IOO on 31 May 2006 that she

would be returning to work half time on 8 June. The Director informed her on 1 June that Phases I and II of the Brazil Audit should be completed by 14 June. It is not immediately apparent that, given that the complainant was returning only half time on 8 June, that was an appropriate time limit. However, the complainant did not then complain of that matter. Instead and as earlier indicated, she forwarded an e-mail on 10 June stating that she was prepared to carry out the functions of Chief of IAS but not those of Chief of IAIS which, she indicated, included the Brazil Audit. The Director of IOO directed her to carry out the Brazil Audit on 20 June and, on 30 June, she informed the Secretary-General that she would not perform any functions associated with the post of Chief of IAIS, until provided with a legal opinion as to what was comprised in her duty statement.

81. Having indicated that she was prepared to work as Chief of IAS on 10 June, the complainant was obliged to accept directives from the Director of IOO as he was her immediate supervisor. She had no right to dictate what she would and would not do. Rather, Article 18 of the Standards of Conduct for the International Civil Service makes it clear that, in such circumstances, if agreement cannot be reached with the supervisor, written instructions may be requested and they may then be challenged but that the instructions must be obeyed. In these circumstances, the complainant's conduct with regard to the property of the main perpetrator of the fraud and, also, the Brazil Audit indicates, at the very least, that she was prepared to cooperate as little as possible within the framework of the Internal Oversight Office.

82. The fourth matter upon which the Organization relies to establish a "pattern of continuous misconduct" is the complainant's "[t]otal lack of performance". In this regard, the Organization seeks to raise matters going back to June 2005 notwithstanding that in his letter of 25 October 2006 the Secretary-General referred only to her lack of performance since the decision to assign her to the post of Chief of IAS. Moreover, the Organization has consistently stated that no adverse comment was made of her work performance as Chief of IAIS in the performance appraisal report for the period ending October 2005

(see Judgment 2743). That being so, the Tribunal will have no regard to matters prior to the complainant's reassignment as Chief of IAS. So far as concerns the latter period – 1 February to 25 October 2006 – the complainant was absent on sick leave from 27 February to 8 June and then worked only half time until 1 September. Further, the complainant has produced evidence of an interim report submitted by her in October 2006 with respect to a review of the WMO regulatory framework. More significantly, there is no performance appraisal report for the period in question. Accordingly, the Tribunal cannot treat the claimed "[t]otal lack of performance" as having been established and will have no regard to it.

83. Although the matters considered above indicate some instances of misconduct and, also, unwillingness on the part of the complainant to cooperate fully within the framework of the Internal Oversight Office, that does not entail the consequence that the decision of 25 October 2006 should stand. A decision not to renew a contract is a discretionary decision that can be reviewed only on limited grounds. Those grounds include that the decision is tainted by procedural irregularities, is based on incorrect facts or essential facts have not been taken into consideration or clearly false conclusions have been drawn from the facts. The complainant argues that the decision of 25 October 2006 should be set aside on the ground that it is a disguised disciplinary measure. It is clear from the terms of the letter of 25 October 2006, particularly the statement that the matters relied upon for the decision "justif[ied] the termination of [the complainant's] contract under chapters IX and X of the Staff Rules", that that decision was taken on the basis of what was considered to be misconduct. So much is confirmed by the complainant's subsequent summary dismissal based on the warning of 25 October 2006 as to a repetition of her earlier conduct and by the Organization's argument that there was a "pattern of continuous misconduct". However, in Judgment 1405, the Tribunal stated that "[s]ince disciplinary proceedings are irrelevant to non-renewal of a fixed-term appointment the complainant may not properly allege hidden disciplinary action". Even so, where non-renewal is based on misconduct, that misconduct must be proved. And

if the decision has not been preceded by disciplinary proceedings, the obligation of good faith requires that an organisation at least give the staff member concerned the opportunity to answer the matters levelled against him or her. Indeed, unless that opportunity is given, the organisation will be at risk of proceeding on incorrect facts or without regard to essential facts or of drawing false conclusions.

84. In the present case, the Secretary-General failed to take into account essential facts, namely, that the complainant had been the victim of harassment, that she was correct in her claim that her reassignment was unlawful and that there were mitigating factors in communicating what he described as her "personal opinion" to members of the Audit Committee with respect to the restructuring of the internal oversight functions. Moreover, for the reasons already given, it has not been established that, in the context of the complainant's extensive sick leave, she had "hardly produced any work" since her reassignment. Further, insofar as the decision not to renew the complainant's contract was based on her having brought internal appeal and harassment proceedings, that involved the false conclusion that the bringing of those proceedings constituted misconduct. As no separate reasons were given for the decision not to return the complainant to her post of Chief of IAS, those same considerations apply to that decision. It follows that the Secretary-General's decision of 28 September 2007 to reject the complainant's internal appeal with respect to his decision of 25 October 2006 must be set aside.

85. It is necessary at this stage to consider the complainant's claims of improper purpose in relation to the decisions of 25 October and 3 November 2006. She claims that these decisions were taken "in retaliation for revealing the fraud being committed by many of the Secretary-General's cronies – high ranked officials who rigged the voting in order to elect him to the position of Secretary-General in May 2003" and/or "in retaliation for her whistle-blowing activities". In Judgment 2742 the Tribunal rejected the complainant's claim that the decision to reassign her to the post of Chief of IAS was "motivated by

a desire to harm or injure [her] in consequence of the Secretary-General's failure to corrupt her investigation of the fraud". And although the claims now made are not identical with her earlier claim, they are, to some extent, dependent on the notion that, at all relevant times, the Secretary-General was desirous of ensuring that the fraud was not properly investigated. It is to be remembered that the decisions presently in question were taken in October and November 2006, some 15 months after the investigation had effectively been closed by the decision of the WMO Executive Council in June 2005. That being so, it is improbable that subsequent decisions were in any way influenced by a desire to prevent proper investigation of the fraud. Moreover, the evidence does not establish that, prior to the closing of the investigation or at any other time prior to the decisions of 25 October and 3 November 2006, the complainant revealed that "the fraud [was] committed by many of the Secretary-General's cronies [...] who rigged the voting in order to elect him to the position of Secretary-General". It is true that she had disclosed in February 2005 that some of the misappropriated funds had been used in connection with the World Meteorological Congress at which the Secretary-General was elected, a fact that he, himself, later acknowledged. However, the complainant did not establish that the fraud was committed by any particular person or persons in addition to the main perpetrator.

Further, shortly after his election, the Secretary-General instructed the complainant to investigate the possible involvement of other staff members and, as a result, three were the subject of disciplinary proceedings. The only evidence of the Secretary-General's possible discomfiture in relation to the investigation is to be found in the events relating to the senior legal adviser and, as already noted, the complainant had merely adverted to circumstances that she had found suspicious. The only matter that occurred prior to the decisions in question and that might possibly be considered "whistle-blowing" was the complainant's communication to the Audit Committee in which she advised that the restructuring of the internal oversight function was unlawful. Although this matter was relied upon for the decision of 25 October 2006, standing alone, it will not support a finding that that or the subsequent decision of

3 November was taken by way of retaliation for the complainant's whistle-blowing or for having uncovered fraud on the part of persons other than the main perpetrator. These claims of improper purpose are dismissed.

86. Although the complainant's claims of retaliation for whistle-blowing and/or for revealing aspects of the fraud are dismissed, there can be no doubt that the decision of 3 November 2006 was taken in retaliation for her having exercised her right to seek review of the decision of 25 October and for having pursued her claims of harassment. So much is clear both from the Secretary-General's letter of 3 November 2006 and the submissions filed in WMO's reply. Retaliation on this basis is no different from retaliation for pursuing an internal appeal which, as the Tribunal pointed out in Judgment 2540, under 27, "is a gross abuse of power warranting an award of substantial exemplary damages".

87. The complainant raises other matters to establish improper purpose and/or procedural irregularities attending the decision of 3 November 2006, including with respect to the proceedings of the Joint Appeals Board. In this last regard, she contends that the proceedings were flawed because the same Board was constituted to hear her three appeals and heard them together. There is nothing in the Staff Rules to preclude that course. Moreover, that was a reasonable course in the circumstances. Nor were its proceedings invalidated by the appointment of an outside legal adviser to assist in its work. Further, there is no evidence to support the complainant's claim that the Board lacked independence and neutrality and allowed itself to be the target of interference by the Secretary-General. It is not clear why the Board did not deal with the complainant's request that it recommend the suspension of the decision of 3 November 2006 but, as the decision of 3 November will be set aside and the complainant will be awarded damages on account of it, that is not a matter that need be further considered. Nor is it necessary to consider the other matters raised by the complainant, such as the fact that the decision was taken while she was on sick leave or that she was not given an opportunity to

respond to the matters raised against her. These matters would not add to the relief to be granted.

88. The conclusion that the decision of 3 November 2006 was an act of retaliation for the complainant's actions in pursuing her claims of harassment and in seeking review of the decision of 25 October 2006 has no application to that earlier decision. In relation to that decision, the complainant argues that it was motivated by malice, ill will, bias and prejudice. There is evidence that by 25 October 2006, the Secretary-General had developed considerable hostility towards the complainant. So much is apparent from his letter of that date to the Chairman of the Joint Grievance Panel to which reference has already been made. In that letter, he also stated:

> "[The complainant] has not hesitated to oppose the decisions concerning the re-organization of internal oversight by all means, including by abusing her functions as internal auditor, and through false and malicious allegations. Although such re-organization […] had been urged, reviewed and now endorsed by the Executive Council, [she] still asserts that it is illegal and contrary to the interest of the Organization."

That statement confirms that the Secretary-General never doubted the lawfulness of his decision to replace the IAIS with the IOO, although he certainly had reason to do so by February 2005 when the complainant provided him with the report that she subsequently sent to the Audit Committee. It is a reasonable inference from the evidence that the Secretary-General was irate with the complainant for having challenged what he regarded as merely "reorganization". Additionally, it is a reasonable inference that he considered that her actions were taken in bad faith or, to use his words, were "abusive and ill driven", because she had applied for the Director's post. Indeed it is because of her application for that post that WMO argues that the complainant acted in bad faith and engaged in "blackmailing methods".

89. It must be concluded that, by reason of his misplaced belief as to the lawfulness of the abolition of the IAIS and his failure to understand why the complainant had applied for the Director's post and still maintained that the decision to abolish the IAIS was unlawful, the Secretary-General had, by 25 October, ascribed to her various

motives indicating that, by then, he was prejudiced against her. It is, thus, properly to be concluded that his decision of that date was motivated by ill will. Also, it must be concluded that the Secretary-General's unlawful decision to reassign the complainant to the post of Chief of IAS in conjunction with the harassment that occurred in 2005 and in 2006 led the complainant to ascribe motives to the Secretary-General which, in turn fostered further ill will on his part and led inevitably to distrust on both sides. However, the culpability of the complainant in this regard is not as great as that of the Secretary-General for, after all, it was she who was subjected to harassment and to an unlawful decision which must have had a devastating impact on her professional reputation. There will be an award of moral damages with respect to the decision of 25 October 2006, but account will be taken of the complainant's contributing behaviour.

90. The complainant raises other matters with respect to the decision of 25 October 2006, including alleged defects in the proceedings of the Joint Appeals Board. For the reasons given with respect to the decision of 3 November 2006, it is not necessary that these matters be considered.

91. In her sixth complaint, the complainant seeks damages for the publication in the WMO monthly information bulletin that she had been separated from service, in the English version, and dismissed from service ("*démise de ses fonctions*") in the French version. The publication of this information was contrary to the Secretary-General's instructions but, even if published negligently, WMO is liable for the damage occasioned to the complainant's reputation and dignity. In this regard, it was said in Judgment 2720 that "international organisations are bound to refrain from any type of conduct that may harm the dignity or reputation of their staff members" (see also Judgments 396, 1875, 2371 and 2475). It was also pointed out in Judgment 2720 that that obligation extends to former staff members.

92. There can be no doubt that, in the context of the applicable Staff Rules, staff members who read the edition of WMO Info in

which the offending material was published would have understood it to mean that the complainant had been dismissed for serious misconduct and, indeed, that she was guilty of serious misconduct. The publication was, thus, a serious affront to her professional reputation and dignity. It is no defence to a publication of that kind, as held by the Joint Appeals Board, that it "did not constitute a violation of […] WMO procedures". The Board added that it "[did not] detect in [the] publication any infringement of the [complainant's] privacy". It is of the essence of a publication that reflects adversely on a person that it infringes on his or her privacy.

93. There will be an award of material and moral damages in relation to the publication in WMO Info. However, account will be taken of the facts that the publication resulted from negligence, not malice, that it was speedily withdrawn and that the Secretary-General apologised to the complainant. In Judgment 2720 mentioned above the Tribunal held that, in the case of a continuing duty of an organisation to refrain from any type of conduct that may harm the reputation or dignity of its staff members, the Tribunal may order performance of that duty, including by ordering the publication of material to restore a person's reputation. The complainant seeks an order of that kind in the present case. However, the Tribunal is satisfied that her honour and reputation will be sufficiently vindicated by this judgment and by an award of damages. Given that the publication in question was the result of negligence, not malice, there is no basis for an award of exemplary or aggravated damages as asked.

94. The first part of the third complaint concerns the statement to Fox News that the complainant had been dismissed for serious misconduct. The second part concerns statements made by two WMO staff members, including a statement addressed to the Joint Appeals Board in connection with the complainant's appeals relating to the decisions of 25 October and 3 November 2006. It is convenient to first deal with the statement to Fox News.

95. Between 21 and 26 January 2007, a number of articles appeared in various newspapers, initially Swiss newspapers and, later, newspapers of other countries, including the United States of America. Evidence internal to the newspaper articles indicates that the complainant spoke to members of the press in Switzerland and that media outlets in other countries subsequently picked up their articles. In her interviews, the complainant revealed aspects of the fraud and her investigation of it and stated that she had been the victim of harassment and threats to get her to change her reports and, also, to get her to delete references to certain persons and that, finally, she had been simply dismissed. In an article in *Tribune de Genève* on 25 January, the complainant stated that she had been relieved of her responsibilities before being terminated for differences of opinion and abuse of her prerogatives. The *International Herald Tribune* published an article on 26 January in which it was said that the complainant "since ha[d] been fired by [WMO]". Contrary to the argument of WMO, the articles in question do not reveal that the complainant "expressly disclosed that she was summarily dismissed for '*serious misconduct'* [...] [and] did so by 26 January 2007 at the latest [...] before WMO was […] contacted by Fox News".

96. The Fox News interview was broadcast on 31 January 2007. In that interview the complainant stated that she had been "forced to cover up some people" by the Secretary-General. When asked why she thought she had been fired, she replied "[f]or retaliation, simply". When later interviewed, the WMO spokesperson said "I can tell you, it is [for] serious misconduct. It is not related to the fraud case. Not at all." A statement that a person has been dismissed for serious misconduct carries the defamatory innuendo, not only that the person has been dismissed for serious misconduct, but that the person concerned was guilty of the serious misconduct for which he or she was dismissed. As has been seen, the additional matters on which WMO relies for the decision to summarily dismiss the complainant do not constitute misconduct and, thus, the innuendo in the statement to Fox News is false.

97. WMO argues that, because the complainant's statements to Fox News as to the reasons for her dismissal were false, "the Organization's right of reply authorised it to indicate the legal grounds on which she was separated from service without commenting on them". It also contends that the media interest was "exclusively prompted" by the complainant's violation of "the most basic standards" for the international civil service, through "falsehood and malice", the latter being a reference to her having divulged confidential information with respect to the fraud. It submits that the complaint is an abuse of process. On the other hand, the complainant argues that she was discharged from the continuing obligation of confidentiality when her employment was unlawfully terminated.

98. There is no doubt that an international civil servant is under an obligation of discretion (see Judgments 1608 and 1732). In Judgment 635 the Tribunal noted that the complainant in that case, who had been subjected to disciplinary proceedings following the appearance of certain newspaper articles, "believed, rightly or wrongly, that she had suffered injustice and she was not bound to absolute secrecy". In the same judgment, the Tribunal noted:

> "[...] international civil servants have legitimate and effective ways within the Organization of making their views known. Any who think themselves wronged may avail themselves of internal appeal procedures, staff associations and staff unions, and independent appeal bodies. That is why [...] the staff are under a general duty of discretion, which varies in scope according to their grade and the circumstances."

99. In the present case, the complainant had unsuccessfully availed herself of internal appeal procedures with respect to the decision to reassign her to the post of Chief of IAS, her attempt to raise her claim of harassment had been rejected as "abusive and ill driven" without investigation and her request for review of the decision not to renew her contract led to her summary dismissal. In these circumstances, it is to be doubted that there was a continuing obligation of complete discretion. Whether or not that is so, the complainant's disclosures to the press in January 2007 did not entitle WMO to publish the false defamatory innuendo that she was guilty of

serious misconduct for which she had been dismissed. However and as has been seen in relation to the decision of 25 October 2006 not to renew her contract, some aspects of the complainant's behaviour did constitute misconduct. WMO is entitled to rely on that misconduct to limit the damages payable. It is also entitled to rely on the fact that the statement was made in the course of discussion of a subject matter of public interest and in answer to allegations raised by the complainant.

100. The second part of the third complaint concerns three statements. The first was contained in a letter marked "personal and confidential" and dated 26 January 2007 from the WMO legal counsel. Amongst other things, it was said in that letter:

> "The Secretary-General has noted with dismay your media campaign, which testifies of behaviour unbefitting international civil service."

The second statement was in a letter to the complainant from the Chief of the Human Resources Division, in response to a request by her for access to the messages on her WMO e-mail account. It was said in that response that:

> "Unfortunately, a few days after your visit to WMO, official information and documents, including confidential information, was misused and disclosed to the media [with] a view to damaging the image of the Organization and named persons. In light of such events, WMO has a duty to prevent further breaches of your obligations as [a] former official as well as to protect confidential information from unauthorized disclosure."

These two statements were either expressly or impliedly authorised by the Secretary-General and were subsequently endorsed by him in a letter of 27 February 2007.

101. The complainant contends that the above statements were defamatory, that the persons who made them abused their positions and that their endorsement by the Secretary-General was "[m]anipulation of [her] personal and professional reputation by rumour, gossip and ridicule", which constitutes harassment as defined in Service Note No. 26/2003. The essence of defamation is the publication of material to third parties, not to the person claiming to be defamed. Accordingly, the claim of defamation is rejected. Moreover, as the statements in question were either expressly or impliedly

authorised by the Secretary-General, there is no basis for the claim that the persons concerned abused their positions. And as the complainant ceased to be a staff member of WMO on 3 November 2006, she cannot rely on Service Note No. 26/2003. She is, however, entitled to rely on WMO's continuing duty to respect her dignity. In a context in which the complainant had undoubtedly disclosed information concerning the fraud and her investigation of it, the letters in question cannot reasonably be regarded as a breach of that duty.

102. The third statement upon which the second part of the third complaint is based was made in answer to an enquiry by the Joint Appeals Board when considering the complainant's internal appeals with respect to the decisions of 25 October and 3 November 2006. Some of the statements related to matters of fact and one was clearly the expression of an opinion. It was earlier indicated that a staff member has some latitude in the formulation of requests to internal administrative or fact-finding bodies or in the formulation of internal appeals. The same latitude applies to members of the administration when responding to requests or resisting internal appeals. There is no evidence that the statements provided to the Joint Appeals Board were reckless or deliberately false or were gratuitously offensive. It follows that this part of the complaint must be dismissed.

103. Before turning to the question of relief, it should be noted that the complainant has requested oral hearings and the production of further documents. However, the primary facts are not disputed and the outcome of the various complaints before the Tribunal depends, in the main, on the legal complexion to be put on those facts. That being so, there is no occasion to order oral hearings or the production of further documents and those applications are rejected.

104. This is not a case in which reinstatement should be ordered. In the first place, some of the matters concerning the complainant's conduct relied upon before the Tribunal in relation to the decision of 25 October 2006 not to renew her contract might have justified that course if the decision were otherwise free from reviewable error and,

also, if it could be said with certainty that the harassment to which the complainant was subjected did not contribute to that conduct. Second, and more significantly, the relationship between the complainant and WMO makes reinstatement impractical.

105. For the reasons already given, the decision of 3 November 2006 must be set aside. The consequence of this is that the complainant must be paid the full salary and other allowances and benefits to which she would have been entitled at grade P.5 from 3 November 2006 until 31 May 2007 and, unless they have already been paid, the allowances that would then have been payable in consequence of the non-renewal of her contract. All amounts should bear interest at the rate of 8 per cent per annum from due dates until the date of payment. Additionally, the complainant should be paid exemplary damages in the sum of 10,000 Swiss francs and moral damages in the sum of 30,000 francs with respect to the summary dismissal decision of 3 November 2006, that decision having undoubtedly had a severe impact on her professional reputation and future earning capacity.

106. The complainant is entitled to moral and material damages with respect to the decision of 25 October 2006 not to renew her contract. In assessing those damages, the Tribunal takes into account that there were aspects of her conduct that contributed to that decision, including her unwillingness to fully cooperate within the new IOO structure and her communication to members of the State Department of the United States of America. Having regard to these matters, the Tribunal awards a global sum of 50,000 francs for moral and material damages resulting from the decision not to renew the complainant's contract. There should be an award of material and moral damages totalling 50,000 francs for the harassment which severely impacted on the complainant's health. There should be an award of material and moral damages of 15,000 francs with respect to the publication in WMO Info and, given the extensive publication of the statement to Fox News, material and moral damages totalling 35,000 francs.

107. The complainant has also asked for non-monetary relief in respect of certain of the matters of which she complains. It is unnecessary to consider whether there is power to grant those claims as the Tribunal is satisfied that the complainant is appropriately vindicated by this judgment and by the award of damages as outlined above.

108. There will be an award of costs in the amount of 25,000 francs.

DECISION

For the above reasons,

1. The Secretary-General's decision of 4 October 2006 is set aside to the extent that it dismissed the complainant's claims of harassment.

2. The Secretary-General's decision of 28 September 2007 is set aside, as is his decision of 3 November 2006.

3. WMO shall pay the complainant the salary, benefits and other allowances that she would have received at grade P.5 from 3 November 2006 until 31 May 2007 and, unless already paid, the allowances that would then have been payable in respect of the non-renewal of her contract, all amounts to bear interest at the rate of 8 per cent per annum from due dates until the date of payment.

4. The Organization shall also pay the complainant exemplary, material and moral damages in the sum of 190,000 Swiss francs in accordance with considerations 105 and 106, above.

5. It shall pay the complainant's costs in the amount of 25,000 francs.

6. The complaints are otherwise dismissed.

PARTIAL DISSENTING OPINION BY JUDGE AGUSTÍN GORDILLO

I agree as to the main findings of the majority's decision but respectfully disagree as to the importance of its monetary conclusions. The context of awards given by other International Administrative Tribunals, to which I belonged at the time, imposes at least upon me a certain degree of congruence. The monetary conclusions of the majority thus seem to me to be a bit of an overreaction to the facts of an Internal Audit and Investigation Chief being at odds with the administration whose conduct she undertakes, as her main responsibility, to investigate for possible fraud or corruption. That was the task she accepted from the very beginning, and it is indeed a post in which some degree of hostility is bound to be encountered and for which the person accepting the post should be specifically qualified and prepared to deal with. That does not condone the harassment, indeed, but it sheds a different light on the amount of compensation.

It is also important to balance the facts with the several instances of acts of misconduct committed by the complainant, as rightly found by the majority's decision. Some of those acts of misconduct are serious indeed, as her providing information to the State Department of the USA, disobedience, lack of discretion, etc., and all of them further significantly mitigate the amount of her right to compensation. The faults were thus not one-sided; as the majority also quite rightly finds, the complainant had a "contributing behaviour" which in my view was significant. The importance of that "faute concurrente" must appropriately be introduced into the finding for damages, as the contributing fact that it comports.

Just as the acts of misconduct of the complainant must now be adjudged as a whole to balance the final compensation to be awarded, so must be the different instances of harassment. Consequently, I do not think that each separate instance of harassment should lead to an individual finding of damages, but that they should be treated as a whole, as the complainant's misconducts are. Otherwise there would be an unequal treatment of the respective claims.

In this context I think that an award for damages of one year's net base salary, plus those already awarded in Judgment 2742 whose context of facts overlaps this case, should both provide adequate compensation for all other facts and conclusions drawn in this opinion and the majority's decision.

Further, as a comparative example, I refer to Judgement No. 1404 adopted by the UN Administrative Tribunal in which the Tribunal found, me included, that "[the Applicant] appears to have been the innocent victim of an over-zealous application of […] policy, conducted in the glare of media publicity, when the Organization appears to have been in a state of moral panic". The Tribunal awarded compensation in the amount of one year's net base salary, for very graver accusations and in the absence of any contributing faults of the complainant. It also awarded costs in the amount of 5,000 United States dollars.

In another judgement of the UN Administrative Tribunal (Judgement No. 1414) adopted in plenary, I adhered to the separate opinion of President Flogaitis and added that such a case was similar to the previous case in Judgement No. 1404, where "[t]he Tribunal was confronted with what amounted to a trial by the press, where an individual staff member was officially singled out for public reproach, only for the authorities to later discover that the accusations against him were groundless". The majority in the plenary granted a smaller compensation than the one year net base salary approach which I proposed in that separate opinion. The public press accusation had been very grave indeed, strongly suggesting private and therefore illegal monetary gain of the complainant.

In 2005 there has been a case at the OAS Administrative Tribunal, which I signed, where 50,000 dollars were unanimously awarded as sole compensation for inequities during the procedure followed under Article XI (2) of the OAS Statute, but it was very exceptional at the OASAT.[*]

[*] See Res. 351/2005 in www.oas.org/tribadm/catalog_test/english/hist_05/2005.doc.

In another case[*] the Inter American Development Bank Administrative Tribunal, which I presided at the time, awarded compensation, in a claim of harassment, for 50,000 dollars, although that was 20 years ago. How much that amount means today is something that need not be determined here, but at least it provides some kind of comparative instrument of analysis.

Thus, if one compares the accumulation of the sums already awarded by this Tribunal in Judgment 2742 and the majority's decision in the present case, with other amounts at different tribunals, including the Tribunal itself where the higher amounts awarded have not to my knowledge been in this range, there is a noteworthy disparity in the amounts of money being disbursed, giving rise to my disquiet as explained in the references of my dissenting opinion in a judgment adopted at the present session (Judgment 2860).

In my view, congruence in such monetary decisions of different International Administrative Tribunals is not only a desirable legal aim, but also a growing legal necessity at least when the signatory Judge is the same. That is why I respectfully dissent as to the amount of damages, which I would fix at one year net base salary. I would award the complainant costs for 5,000 Swiss francs.

[*] http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1075982

In witness of this judgment, adopted on 14 May 2009, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, Mr Agustín Gordillo, Judge, Mr Claude Rouiller, Judge, Mr Giuseppe Barbagallo, Judge, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar

Delivered in public in Geneva on 8 July 2009.

Seydou Ba
Mary G. Gaudron
Agustín Gordillo
Claude Rouiller
Giuseppe Barbagallo
Dolores M. Hansen
Patrick Frydman
Catherine Comtet