

112th Session

Judgment No. 3085

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. G. against the World Health Organization (WHO) on 19 October 2009 and corrected on 21 January 2010, WHO's reply of 23 April, the complainant's rejoinder of 28 July and the Organization's surrejoinder of 13 October 2010;

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. The complainant is a national of Niger born in 1960. She joined WHO's Regional Office for Africa (AFRO) on 6 November 2006 as a Technical Officer, HIV/AIDS Testing and Counselling, at grade P.4, under a two-year fixed-term appointment subject to a one-year probationary period.

The complainant's work objectives for her probationary period under the Performance Management and Development System (PMDS) were finalised in mid-March 2007. Her PMDS appraisal for her probationary period was initiated in July 2007 and completed in January 2008.

In his mid-year comments her first-level supervisor, Dr V., stated that her performance did not meet expectations. In his year-end review he rated her overall performance as falling below expectations and recommended an extension of her probationary period by six months. That recommendation was approved by the complainant's second-level supervisor on 17 January 2008. The complainant provided her final comments on 18 January, expressing her disagreement with the evaluation she had received. On 30 April 2008 Dr V. submitted his comments in connection with the complainant's PMDS appraisal for her extended probationary period. He noted that, although the complainant had made efforts to improve her performance, she did not possess the necessary skills and competencies to carry out the duties of the post to which she had been appointed. He rated her overall performance as falling below expectations and recommended against the confirmation of her appointment. The complainant's second-level supervisor approved that recommendation on 30 May 2008. In her final comments of 3 June 2008, the complainant contested her supervisors' evaluation of her work, denouncing in particular what she considered to be a lack of professional support on the part of Dr V.

By a letter of 23 June 2008 the complainant was informed that the Regional Director had decided not to confirm her appointment on the basis of unsatisfactory performance. Accordingly, her appointment would be terminated one month following receipt of that letter. On 24 June she lodged an appeal with the Director-General, challenging the decision to terminate her appointment on the grounds that it lacked any objective basis and that it was tainted with procedural irregularities, abuse of authority, discrimination and lack of respect for her dignity. The complainant's appointment was subsequently extended several times until 2 September 2009, the date on which she left the service of the Organization.

Prior to that, on 5 May 2008, the complainant had filed an internal complaint alleging professional and sexual harassment on the part of Dr V. These allegations were investigated by the AFRO Grievance Panel, which issued its report on 15 September 2008. It

held that greater efforts should have been made to support the complainant in her work, but it did not find sufficient evidence substantiating her allegations of sexual harassment. It recommended that she be reassigned to a post where her training skills could be used and that a reconciliation meeting with Dr V. be scheduled. It also made a number of general recommendations regarding conflict prevention at the workplace. By a memorandum of 29 October 2008 the Regional Director informed the complainant that he accepted the Panel's findings but that he was unable to follow its recommendations, as there was no available post matching her skills and he considered that a meeting with Dr V. would serve no purpose. On 5 December 2008 the complainant lodged a second appeal with the Director-General, challenging the Regional Director's decision of 29 October.

By a letter of 26 June 2009 the Director-General informed the complainant that she had decided to dismiss her allegations of professional harassment as unsubstantiated. As to her allegations of sexual harassment, the Director-General indicated that she had requested additional information from the President of the AFRO Grievance Panel and that she would be in a position to take a final decision on the matter as soon as she had received that information. On 27 June 2009 the Director-General wrote to inform her that she had decided to dismiss her appeal against the Regional Director's decision not to confirm her appointment and to terminate her contract. That is the impugned decision.

After having filed her complaint with the Tribunal, the complainant received a letter dated 8 February 2010 informing her that, as the Director-General had not been able to corroborate her allegations of sexual harassment, she had decided to close the case. In her submissions to the Tribunal the complainant requests that her complaint be treated as being directed also against the rejection of her internal complaint of harassment.

B. The complainant argues that the impugned decision is vitiated by errors of fact and of law, and by WHO's failure to comply with

statutory provisions and procedures. Indeed, her PMDS appraisals were conducted in a careless and haphazard manner and were characterised by significant delays both in establishing her work objectives and in reviewing her performance. Contrary to Staff Rule 540 and WHO Manual paragraph II.5.60, her mid-year review for her probationary period was signed as late as December 2007, i.e. at the same time as her overdue year-end review, and was deceitfully backdated by Dr V. to September 2007. Also, her post description and work objectives were not established in good time, nor were they “kept up to date at all times”, as required by Staff Rule 530.2 and Manual paragraph II.5.50. Consequently, any conclusions as to her performance must be considered null and void. In addition, not only were the comments made by Dr V. in her PMDS appraisal vague, thus reflecting a lack of knowledge of her work, but they also failed to take into account her own comments and to address her concerns. In effect, the evaluation of her work was based on incorrect facts and the decision to terminate her appointment was therefore arbitrary. The complainant contends that she was not afforded due process, and instead of being given “reasonable time to improve”, as provided for in Staff Rule 1070.2, her probationary period was cut short and she was forced to complete her tasks under increased time pressure because of the delay in establishing her work objectives.

She also argues that the impugned decision is vitiated by neglect, prejudice, personal animosity and by the Organization’s failure to conduct a proper investigation into her allegations of harassment. She contends that Dr V. not only failed to provide her with the necessary guidance and support, but that he also showed personal animosity towards her. Rather than assuming his role in accordance with Staff Rule 530.1, by facilitating her adjustment, establishing a clear and achievable work plan and guiding her in the exercise of her duties, he undermined her from the outset, in particular by failing to establish clear objectives, ignoring her requests for a meeting or feedback, and threatening that he would use his authority to remove her from her post. She was never offered advice on how to improve her allegedly deficient performance, nor was she ever given any objective reasons for the decision to terminate her appointment.

With regard to the investigation into her allegations of harassment, she asserts that it was tainted with bias and procedural flaws. The AFRO Grievance Panel did not observe due process and was not diligent in its handling of her case. Moreover, it failed to acknowledge that the treatment she had suffered at the hands of Dr V. qualified as “harassment” under the WHO Policy on Harassment. Indeed, her supervisor would address her in an aggressive and demeaning manner, he would be openly critical of her abilities and dismissive of her suggestions, and on several occasions he made inappropriate comments and suggestive gestures full of sexual innuendo. Nonetheless, in its report the Panel downplayed the gravity of that conduct, thus enabling the Director-General to sideline the issue of harassment and to dismiss her allegations.

The complainant asks the Tribunal to quash the impugned decision and to order her reinstatement together with retroactive payment of the salary, benefits and other emoluments to which she would have been entitled from the date of her termination to the date of her reinstatement. She claims 200,000 United States dollars in moral damages, an additional award in moral and exemplary damages for the Organization’s excessive delay in rendering a final decision on her harassment complaint, and costs. She claims interest at the rate of 8 per cent per annum on all of the above amounts from the date of her separation from service to the date on which all sums due are paid to her in full. She also asks the Tribunal to order WHO to carry out a disciplinary investigation into the conduct of her former first-level supervisor, Dr V., and to hold a public hearing at which a number of individuals would be called as witnesses.

C. In its reply WHO submits that the impugned decision was lawful, procedurally sound and based on objective reasons. It explains that the time taken to finalise the complainant’s work plan during her first year of service was due to the fact that she needed considerable assistance in developing her work objectives and, although this led to a delay in the subsequent stages of the PMDS process, it was necessary to ensure that she had a clear understanding of what she was expected to achieve in her new role.

The Organization asserts that the requirements of Staff Rules 530.2, 530.3 and 1060 and the relevant Manual provisions, were fully complied with. Specifically, numerous discussions were held between the complainant and Dr V. during her probationary period, both within and alongside the formal PMDS process. The comments made on the complainant's appraisals were precise, reflected an objective assessment of her work and provided concrete examples of the areas where improvement was necessary. Moreover, the complainant was given ample opportunity to reply to these comments and her observations were duly taken into consideration by her supervisors. For example, an independent review of the documents which she had prepared was carried out at her request. Even though she was given significant support and guidance, as well as sufficient time to improve, especially through the extension of her probationary period, she was not able to fulfil her functions at the required level and to produce the expected results. In those circumstances, a further extension of her probationary period would not have been appropriate.

The Organization also contends that the decision not to confirm the complainant's appointment for unsatisfactory performance was taken by the Director-General in the proper exercise of her discretionary authority and in accordance with the requirements set out in the Tribunal's case law. In particular, the complainant was fully aware of the criteria on the basis of which she would be evaluated, she was notified of her deficiencies early on in the PMDS process and was afforded ample opportunity to address them, and she was given a clear warning that her appointment would not be confirmed if her performance did not improve.

The defendant dismisses the allegations of prejudice and personal animosity on the part of Dr V. In its opinion, the complainant's PMDS appraisals reflected her supervisors' honest assessment of her performance and there is no basis to infer bad faith or improper motive. Regarding her allegations of harassment against Dr V., WHO points out that these were investigated pursuant to the procedures

set out in the Organization's Policy on Harassment. It argues that the complainant was treated fairly and in accordance with the requirements of due process. The report of the AFRO Grievance Panel was based on an objective evaluation of the evidence gathered in the course of its investigation, and its conclusions show that the testimonies of both parties were given due consideration.

The Organization also explains that the letter of 8 February 2010 notifying the complainant that, as her allegations of harassment had been found unsubstantiated the case had been closed, was not transmitted to her earlier due to an administrative error. It adds that the complainant's claim for a disciplinary investigation into Dr V.'s conduct is wholly inappropriate and, in any event, beyond the competence of the Tribunal.

D. In her rejoinder the complainant accuses WHO of presenting in its reply a misleading and disingenuous account of the events leading to the impugned decision. She asserts that she was not informed of her alleged deficiencies until very late in the PMDS process, namely when the decision not to confirm her appointment was made, nor was she at any point provided with a work plan to enable her to improve. She questions the AFRO Grievance Panel's impartiality and considers that its failure to call key witnesses amounts to a breach of due process. In her view, the Director-General ought to have taken into account the testimonies of colleagues who had witnessed various incidents amounting to professional and sexual harassment.

E. In its surrejoinder the Organization maintains its position. It submits that the complainant has produced no reliable evidence to substantiate her contention that the account of events presented in its reply is inaccurate. It rejects the allegation that the mid-year review for her probationary period was backdated. The AFRO Grievance Panel did in fact interview individuals whom the complainant identifies as key witnesses. In its opinion, the facts relating to her allegations of harassment were properly established.

CONSIDERATIONS

1. On 6 November 2006 the complainant, who is a specialised medical doctor, joined WHO's Regional Office for Africa (AFRO) as a Technical Officer, HIV/AIDS Testing and Counselling, on a two-year fixed-term appointment with a one-year probationary period.

2. By a letter of 23 June 2008 she was informed that the Regional Director had decided not to confirm her appointment. She appealed the decision and on 27 June 2009 the Director-General concluded that the non-confirmation of her appointment was well founded and rejected the appeal. Prior to that, in May 2008 the complainant had filed an internal complaint with the AFRO Grievance Panel, alleging professional and sexual harassment against Dr V., her first-level supervisor. Ultimately, the Director-General, in two separate decisions, dismissed the complainant's appeals against the decision not to confirm her appointment and against the rejection of her harassment complaint. Although the complaint before the Tribunal was initially only directed against the decision of 27 June 2009, by agreement of the parties it also includes the decisions concerning the allegations of harassment.

3. In summary, the complainant contends that the decision not to confirm her appointment is tainted by errors of fact and law and non-compliance with WHO's statutory provisions and procedures. She also alleges that the decision is tainted by personal prejudice and animosity on the part of Dr V. whom she claims subjected her to professional and sexual harassment that was not properly investigated.

4. The Organization submits that a review of the relevant facts clearly demonstrates compliance with the Staff Rules and the WHO Manual. As well, it shows that it acted throughout in accordance with the principles articulated in the Tribunal's case law regarding periods of probation and the non-confirmation of appointment for unsatisfactory performance.

5. WHO maintains that from the start of her probation the complainant was well aware that her performance would be assessed on the basis of the objectives established under the PMDS. Additionally, it notes that through the ongoing conversations with her supervisors, her obligations and responsibilities were continuously reiterated. It asserts that from February 2007 the complainant was made aware of the deficiencies in her performance and was given feedback, support and guidance from her supervisors, but despite this assistance she lacked the necessary skills to fulfil the functions of her position. Further, it claims that between December 2007 and May 2008, in addition to the PMDS process, Dr V. gave the complainant regular oral and written feedback regarding various aspects of her work, in particular, in relation to the preparation of documents and reports. Notwithstanding this feedback, however, she simply could not improve her performance to the necessary level.

6. WHO points out that the complainant was given the opportunity to reply orally and in writing through the PMDS process. It adds that through and in addition to the PMDS process, it was made clear to her that there were serious concerns about her performance and that her continued employment was in jeopardy if her performance did not improve.

7. At this point, a brief review of the chronology leading up to the decision not to confirm the complainant's appointment is useful.

8. Shortly after the complainant joined AFRO, her first-level supervisor, Dr V., briefed her on the requirements of the PMDS and asked her to prepare her performance objectives for the year against which she would be evaluated. Following a number of exchanges of e-mails and discussions involving Dr V. and the complainant's second-level supervisor her work objectives were established in mid-March 2007. Although the intervening facts are disputed, it is not disputed that Dr V. completed his year-end review of the complainant's performance on 12 December 2007. He noted the

complainant's strengths in the areas of training and capacity building, her very good interpersonal relationships with colleagues and her team spirit. However, he raised serious concerns regarding her substantive responsibilities. He rated the complainant's overall performance as falling below expectations and recommended a six-month extension of her probation. In her final comments, the complainant disputed the evaluation and outlined the various tasks she had completed during the year. The complainant's PMDS appraisal for her probationary period was not finalised until 17 January 2008 when her second-level supervisor approved the extension of her probation until 5 May 2008.

9. The complainant's objectives for the six-month extension of her probation were established at the end of February 2008. On 30 April 2008 Dr V. provided his comments on the complainant's PMDS appraisal for her extended probationary period. He observed that documents prepared by the complainant were not of sufficient quality and "need[ed] much more work to be finalized" and, in his view, she did not have the competence necessary to fulfil this or her other job responsibilities. He rated her overall performance as falling below expectations and recommended the non-confirmation of her appointment. On 5 May 2008 the complainant filed an internal complaint with the AFRO Grievance Panel alleging professional and sexual harassment on the part of her supervisor.

10. On 29 May 2008 the complainant was told that her probationary period would be extended to 5 August so as to allow sufficient time for the completion of the PMDS process. Her second-level supervisor approved the recommendation not to confirm her appointment on 30 May 2008. On that same day the complainant met with her second-level supervisor who told her that her work documents had been given to a third party for review, that she was to report directly to him, and that she should not have any contact with Dr V. The complainant was also told that she would be given new tasks during the following two months. By a letter of 23 June 2008 she was informed of the Regional Director's decision not to confirm her

appointment on the basis of unsatisfactory performance. She was also informed that her appointment would end one month after her receipt of the letter. She appealed this decision the following day. She was subsequently retained in service pending the outcome of her appeal.

11. The Grievance Panel released its report on the harassment allegations on 15 September 2008. The Regional Director accepted the Panel's conclusions that there was no factual support for the allegations and decided to close the case. On 5 December 2008 the complainant filed an appeal against this decision with the Director-General. On 22 June 2009 the Executive Director of the Director-General's Office asked the Grievance Panel for additional information and certain clarifications in relation to its report.

12. On 26 June 2009 the Director-General informed the complainant of her decision to close the case of professional harassment on the basis that the allegations were not supported by the facts. As to the sexual harassment allegations, the Director-General advised that she was not in a position to render a final decision due to the need for additional information and clarification. In her letter of 27 June 2009 to the complainant, the Director-General concluded that the non-confirmation of her appointment was well founded and rejected her appeal. The complainant filed her complaint with the Tribunal against this decision on 19 October 2009.

13. Subsequently, by a letter of 8 February 2010, the complainant was informed that the Director-General had not been able to corroborate her allegations of sexual harassment and had therefore decided to close the case. WHO acknowledged that this letter ought to have been sent to the complainant in October 2009 and apologised for the administrative error that delayed the notification of the decision to her.

14. Before considering WHO's submission that it fully complied with the Staff Rules and Manual requirements, it is useful to review

the respective relevant provisions. Staff Rule 530.1 sets out the duties and responsibilities of a staff member's supervisor regarding performance evaluation. It states:

- “530.1 Supervisors shall be responsible for:
 - 530.1.1 facilitating the adjustment of the staff they supervise to their work;
 - 530.1.2 establishing, in consultation with each staff member, a work plan;
 - 530.1.3 guiding staff under their supervision.”

Staff Rule 530.2, in part, reads:

- “530.2 For staff at D.2 level and below, in addition to normal work review and discussion with a staff member, supervisors shall periodically make a formal evaluation of the performance, conduct and development potential of all staff members under their supervision. This evaluation shall be made at such intervals as the work situation or the individual's performance requires, but in no case less frequently than once a year. Supervisors shall discuss their conclusions with the staff member and make specific suggestions for improvement in performance as necessary.”

15. With regard to the performance evaluation of staff members on probation, Staff Rules 540.1 and 540.2 state:

- “540.1 A performance evaluation report (see Rule 530.2) shall be made before the end of the normal probationary period (see Rule 420.7). On the basis of this report a decision shall be taken, and notified to the staff member, that the:
 - 540.1.1 appointment is confirmed;
 - 540.1.2 probationary period is extended for a specified period;
 - 540.1.3 appointment is not confirmed and is to be terminated.
- 540.2 In the case of either 540.1.2 or 540.1.3, the staff member shall be notified of the reasons. If the probationary period is extended, a further report and decision are required before the expiry of this additional period.”

16. Although Staff Rule 540.1 refers to the formal evaluation process in Staff Rule 530.2, the Manual provides two different processes for performance evaluations conducted pursuant to

Rules 530.2 and 540 respectively. In particular, the provisions in Manual paragraphs II.5.60-90 provide:

“60 In accordance with Staff Rule 540, an appraisal report has to be prepared before the end of the normal probationary period of one year. At least three months in advance of the date on which a probationary period expires, Personnel (regional personnel officer) sends to the responsible supervisor form WHO 66.1 PER (English) or WHO 66.2 PER (French), ‘Probationary Performance Appraisal Report’, for the staff member concerned. Probationary periods are calculated precisely to the day and not rounded off to the end of a month. Care must be taken to complete and return the form at least one month before expiry of the probationary period in order to avoid having to extend the latter owing to the delay.

70 The staff member concerned, the immediate supervisor, the second-level supervisor and the official authorized to confirm the appointment (see para. 80) complete the form. The form is then returned by the supervisor to Personnel (regional personnel officer).

80 On the basis of the appraisal report and of the recommendations of the supervisors one of three decisions is taken: if the report is satisfactory, the appointment is confirmed; if the performance or conduct is unsatisfactory or if the staff member is unsuited to international service, the appointment is terminated under Staff Rule 1060 (see II.9.380-430 and 450-500); if the report is not fully satisfactory or if the circumstances have not permitted an adequate evaluation, the probationary period may be extended. For staff members at grade P.6 and above, the decision is taken by the Director-General. At headquarters, assistant directors-general decide for staff at grades P.4 and P.5, and directors for staff at grades P.3 and below. Regional directors decide for all staff at grades P.5 and below serving in their region.

90 Before the expiry of any extended probationary period a further appraisal report is prepared and on that basis it is decided if the appointment will be confirmed, terminated or extended further. However, only exceptionally may a probationary period be extended more than once, and in any case not beyond a total period of two years (see Staff Rule 420.4). Extensions are expressed in whole months calculated precisely to the day (see para. 60).”

17. At this point, it should be noted that since the introduction of the PMDS, the Probationary Performance Appraisal Report form referred to in the Manual has been replaced by the PMDS form. The use of the one form rather than the other is not material here and,

for the sake of clarity, the requisite report is referred to below as the PMDS. As well, although the detailed requirements in relation to probationary periods found in the paragraphs of the Manual quoted above are not set out in the Staff Rules, they are administrative instructions that a staff member is entitled to rely on and can expect will be followed. As stated in Manual paragraph II.5.10, this section “establishes the administrative policies and procedures required to implement Articles I, IV and X of the Staff Regulations and Sections 1, 4, 5 and 11 of the Staff Rules”.

18. Aside from a broad assertion that it fully complied with the Staff Rules and relevant paragraphs in the Manual in relation to the probationary period itself, the Organization does not specifically respond to the complainant’s allegations of breaches of the Staff Rules and the Manual. Contrary to its submission, a review of the relevant facts shows that WHO did not observe the Staff Rules and the Manual procedures. Having commenced her period of probation on 6 November 2006, in accordance with Staff Rule 540.1 and Manual paragraph II.5.60, the PMDS appraisal should have been completed before the end of the probationary period, and preferably one month prior to its expiry. By the defendant’s own admission, Dr V. did not provide his year-end review of the complainant’s performance until 12 December 2007 and the complainant’s PMDS appraisal for her probationary period was not completed until mid-January 2008, more than two months after the expiry of the complainant’s initial probation. Similarly, the requisite PMDS appraisal for the complainant’s extended probationary period was not completed until after its expiry on 5 May 2008. WHO’s unexplained failures to complete the required performance evaluations within the mandated time frames represent a serious violation of its own rules. On this basis alone, the impugned decision of 27 June 2009 must be set aside. WHO’s disregard for its own rules and procedures is further reflected in the extension given at the end of May 2008. It is clear that this

extension was a matter of administrative convenience to overcome the failure to complete the PMDS process in a timely manner and is directly at odds with the purpose and the exceptional nature of a second extension of the probationary period as provided in the Manual.

19. Although WHO did not respond to the allegations of the breaches of statutory provisions and Manual procedures, it nonetheless stresses that the three governing principles in the Tribunal's case law in relation to the non-confirmation of appointment for unsatisfactory performance were fully respected in the complainant's case. The three principles to which the defendant refers are: the staff member must be informed of the criteria used to evaluate his or her performance; the staff member must be informed of the deficiencies in performance so that remedial steps can be taken and the organisation must take steps to help the staff member to improve; and, the staff member must be clearly warned that continued employment is in jeopardy.

20. The Organization claims that the complainant was told in a timely manner about the deficiencies in her performance and was given guidance and assistance throughout her probation. Albeit late, it is not disputed that objectives for the complainant's period of probation were identified. As to the complainant's performance, WHO maintains that very early on in the probation period, in mid-February 2007, Dr V. met with the complainant and gave her a note for the record in which he set out his concerns about her performance and her capacity to perform certain functions required of the regional focal point on HIV testing and counselling. The complainant denies ever having received the document. She also denies Dr V.'s assertions about the guidance and help he gave her.

21. Given the acknowledged importance of a timely warning of deficiencies in performance, it would be expected that a document

such as a note for the record would be signed and dated and if, as alleged, it was hand delivered, it would have an acknowledgement of receipt endorsed on the document itself or there would be some other form of confirmation of its delivery. It is also observed, based on the large number of e-mails and other communications included in the record, that the complainant routinely confirmed conversations and requests by e-mail. As there is nothing in the record indicating that she received the said note, the Tribunal accepts that the complainant did not receive it.

22. Having said this, it is true that deficiencies in the complainant's performance were noted in the PMDS appraisals. However, as to the alleged assistance that was given to the complainant to improve her performance, other than broad assertions on the part of her supervisor that this was done, there is no evidence of any specific guidance or suggestions given to the complainant by Dr V. in terms of concrete steps or measures that the complainant should take to improve her performance in those areas of identified deficiencies and against which improvement in performance could be monitored and measured. Again, given its importance in assessing the overall suitability of the staff member, it would be expected that the specific directions and expectations would be documented. Equally, it would be expected that the guidance Dr V. provided to the complainant would also be documented.

23. The Tribunal has reaffirmed on numerous occasions that "where the reason for refusal of confirmation is unsatisfactory performance [it] will not replace the organisation's assessment with its own" (see Judgment 1418, under 6, and Judgment 2646, under 5). The Tribunal has also consistently held that "an organisation owes it to its employees, especially probationers, to guide them in the performance of their duties and to warn them in specific terms if they are not giving satisfaction and are in risk of dismissal" and that these two considerations "are fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to

respect their dignity” (see Judgment 2529, under 15, and the case law cited therein).

24. In the present case, the decision not to confirm the complainant’s appointment is fundamentally tainted by WHO’s failure to observe its own rules and procedures and by its failure to provide the complainant with timely, meaningful guidance and assistance during the periods of probation. It will therefore be set aside.

25. As to the decisions in relation to the allegations of professional and sexual harassment, the complainant contends that the investigation into her internal complaint of harassment was flawed because the Grievance Panel wrongfully failed to characterise Dr V.’s behaviour as harassment. She submits that his behaviour clearly comes within the definition of harassment in the WHO Policy on Harassment. She claims that the Panel was neither objective nor diligent in its handling of her case and that in deciding whether to uphold the non-confirmation of her appointment the Director-General erred by failing to take account of the alleged harassment and the Panel’s view that more could have been done to assist her during her probation. In addition, the complainant argues that the delay in the transmission of the Director-General’s decision of 8 February 2010 is indicative of the ongoing pattern of neglect and mismanagement by WHO and she seeks compensation for the delay.

26. In Judgment 2642, under 8, the Tribunal described the obligations of an international organisation in relation to an allegation of harassment as follows:

“In Judgment 2552 the Tribunal pointed out that an accusation of harassment ‘requires that an international organisation both investigate the matter thoroughly and accord full due process and protection to the person accused’. Its duty to a person who makes a claim of harassment requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context (see Judgment 2524), that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed not be stigmatised or victimised on that account (see Judgment 1376).”

27. Having reviewed the record and the Grievance Panel's report including the account of its proceedings and deliberations, the Tribunal finds that the complainant's contentions with respect to the conduct of the investigation are without merit. The Panel conducted an extensive investigation in accordance with WHO policy. It interviewed the complainant and her first-level supervisor on more than one occasion each, as well as a number of other witnesses, and carefully weighed the evidence. As to the delay in rendering its supplementary report, the Panel's explanation that the travel obligations of certain individuals caused the delay is reasonable in the circumstances.

28. As to the Panel's findings and, in turn, the Director-General's decision in relation to the allegations of professional harassment, the Tribunal concludes that they do not involve any reviewable error.

29. As to the complainant's allegations of sexual harassment, the Panel found that there was insufficient evidence to support a finding of sexual harassment. The Director-General accepted this finding; however, she elaborated further in connection with an incident that occurred at a team meeting to discuss an upcoming training session that would involve a condom demonstration. According to the complainant, when she enquired whether a wooden model would be available for the demonstration, Dr V. replied that she could demonstrate on him. The Director-General noted that the incident occurred in a relaxed friendly atmosphere and that Dr V.'s comment was not directed at the complainant or at anyone else. However, in her view, the comment was in poor taste, showed a lack of good judgement and had no place in a working environment. She added that she would deal with Dr V. in a separate letter to him.

30. Whether the complainant's account or Dr V.'s account as to what transpired at the meeting is accepted, the comment by any standard was offensive and goes beyond being simply a matter of poor

taste and bad judgement and amounts to sexual harassment for which the complainant is entitled to moral damages. As to the other events relied upon by the complainant in her internal complaint of sexual harassment, the Tribunal finds no error in the Director-General's conclusion that those events were not established by the evidence.

31. The complainant also alleges that the decision not to confirm her appointment was motivated by prejudice and personal animosity on the part of Dr V. As the complainant does not specify or identify the basis upon which she makes the allegation, any further consideration is unnecessary.

32. The Tribunal considers that the briefs filed by the parties and their annexes are sufficient to enable it to reach firm conclusions with respect to the matters in issue. Accordingly, the application for an oral hearing is rejected.

33. In addition to other relief, the complainant asks to be reinstated to her post with full retroactive effect including payment of salary, benefits and other emoluments to which she would have been entitled had she not been wrongly terminated to the date of reinstatement. Given the circumstances and the length of time since the complainant's termination, the Tribunal will not order reinstatement. However, even if reinstatement was appropriate, it would only be for a further period of probation since it cannot be said with certainty that the complainant's appointment would have been confirmed but for the flawed process. In these circumstances, the complainant is entitled to material damages in the amount of 30,000 United States dollars. She is also entitled to moral damages for the affront to her dignity occasioned by AFRO's conduct during the course of her probation and for the incident of sexual harassment referred to in considerations 29 and 30. For these matters the Tribunal will award a global amount of 20,000 dollars. She is also entitled to costs, which the Tribunal fixes at 4,000 dollars.

DECISION

For the above reasons,

1. The Director-General's decisions of 27 June 2009 and 8 February 2010 are set aside as is the Regional Director's decision of 23 June 2008.
2. WHO shall pay the complainant material damages in the amount of 30,000 United States dollars.
3. It shall pay the complainant moral damages in the amount of 20,000 dollars.
4. It shall also pay her 4,000 dollars in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 10 November 2011, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet