**112th Session** **Judgment No. 3103**

THE ADMINISTRATIVE TRIBUNAL,

Considering the first and second complaints filed by Mrs R. T. against the International Labour Organization (ILO) on 23 February 2010, corrected on 10 May and 8 June, respectively, the ILO's replies of 13 September, the complainant's rejoinders of 14 December 2010 and the Organization's surrejoinders dated 9 and 15 March 2011, respectively;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is an Armenian national born in 1968. She joined the International Labour Office, the ILO's secretariat, in January 2001 following a competitive recruitment process carried out within the framework of the five-year Young Professionals Career Entrance Programme (YPCEP). Her contract referred to the YPCEP as consisting of an initial assignment of 12 months in Geneva (Switzerland), followed by two assignments of 18 months each in two field offices and culminating in a further assignment of 12 months in

Geneva. She was granted a fixed-term contract at grade P.2 for an initial period of one year, and her first assignment was to the Employment Strategy Department in Geneva. Her contract was subsequently extended several times, often for periods shorter than one year.

On 1 May 2002 the complainant was transferred to the Organization's Subregional Office in Moscow (Russia) and, following the successful completion of her probationary period, she was promoted to grade P.3 with effect from 1 February 2003. Towards the end of 2003, the Human Resources Development Department (HRD) encountered difficulties in identifying a new assignment for her to take up at the end of her assignment in Moscow. No solution was found during the next 12 months, and she therefore remained in Moscow. In a minute of 3 November 2004 to the Executive Director of Cabinet, the Director of HRD indicated that the complainant's profile was particularly suitable for either the Development Cooperation Department (CODEV)[*], or the Policy Integration Department (INTEGRATION), but that neither of these departments could accommodate her unless they were granted additional resources. He therefore sought authorisation to finance her placement through cash surplus funds. The Director also emphasised that HRD would "continue its efforts to integrate her onto a fully funded regular budget post as soon as possible". In the event, the complainant was transferred back to headquarters and assigned to INTEGRATION effective 1 January 2005.

On 20 November 2005 the complainant wrote to the new Director of HRD to draw her attention to the fact that her assignment with INTEGRATION in the context of the YPCEP was coming to an end. She stated that she would prefer to remain in INTEGRATION thereafter but that, unless a regular budget post was identified for her in that department, she wished to be considered for two vacant posts in CODEV and the Bureau of Programming and Management (PROGRAM), respectively. Some three weeks later, having received

[*] Soon after CODEV became a Branch within the Partnerships and Development Cooperation Department (PARDEV).

no reply, she informed the Director of HRD that she had applied for these two vacancies. On 2 February 2006 the complainant sought clarification as to whether the Office would honour its "commitment" to appoint her to a position funded under the Organization's regular budget. In June 2006 her contract was extended until 30 April 2007, but she was advised that this extension did not imply that a position had been identified for her on the regular budget. However, HRD would continue its efforts to identify such a position, and she was encouraged to continue applying for vacancies corresponding to her profile. On 15 January 2007 the complainant drew HRD's attention to two regular budget positions which had become vacant in INTEGRATION, expressing the hope that the Office would "take this opportunity to regularise [her] situation". In April 2007 she was advised that, although her contract would be renewed for a further 12-month period, her salary would continue to be paid by the Office and not by INTEGRATION and that HRD was continuing its efforts to find a position for her elsewhere in the Organization.

In an e-mail of 28 January 2008 to the Director of HRD, the complainant listed several vacancies for which she had applied, including vacancy No. 2007/68 for the position of Programme Officer (Resource Mobilization) and vacancy No. 2007/67 for the position of Technical Cooperation Officer (Programme and Operations), both of which were in CODEV, and requested that her candidacy be given special attention, in accordance with Article 4.2 of the Staff Regulations. On 29 May 2008 she was informed that she had not been selected for either position.

In the meantime, by a letter of 29 February 2008, the Director of HRD had notified the complainant that the Office would not be in a position to renew her contract upon its expiry on 30 April 2008. She noted that, as HRD had been unable to identify a regular budget post matching her profile and competencies, her employment was being financed under deficit funding and hence a further extension of her contract was not possible due to budgetary constraints. On 15 April 2008 the complainant provided HRD with a copy of a medical certificate attesting to her pregnancy. The Director of HRD

acknowledged receipt of the certificate on 23 April, noting that no further action was required on the part of the department.

The complainant wrote to the Director of PARDEV on 6 June 2008 requesting, pursuant to paragraph 13 of Annex I to the Staff Regulations, an interview in order to obtain feedback on the technical evaluation leading to the outcome of competition No. 2007/68 and competition No. 2007/67. The Director of PARDEV replied that same day that there had been over 400 applications for vacancy No. 2007/67, all of which had been looked at carefully and "scanned" on the basis of the following selection criteria: (i) several years of experience in ILO technical cooperation projects, not just as technical or policy staff but also dealing with programme and budget-related matters; (ii) working experience in countries/regions outside country/region of birth; and (iii) knowledge of the ILO's Technical Cooperation Manual. She noted that the complainant's curriculum vitae could not be retrieved at that stage, as it had been destroyed upon completion of the recruitment process in line with ILO practice, and added that she was unable to meet with the complainant due to her heavy workload. The complainant acknowledged receipt of the Director's reply and reiterated her request for feedback on competition No. 2007/68. That request went unheeded.

On 22 August 2008 the complainant filed a grievance with HRD against the decision not to renew her contract upon its expiry on 30 April 2008. Efforts to resolve the matter through informal means proved unsuccessful. On 9 April 2009 HRD rejected the grievance as groundless and on 12 May 2009 the complainant submitted it to the Joint Advisory Appeals Board. Prior to that, on 9 July 2008, the complainant had filed a first grievance with the Joint Advisory Appeals Board, under paragraph 17 of Annex I to the Staff Regulations, challenging the outcome of competition No. 2007/68.

The Board issued its reports on the complainant's first and second grievances on 23 September and 17 November 2009 respectively. It recommended that the Director-General dismiss both grievances as devoid of merit. By a letter dated 25 November 2009 the Executive Director for Management and Administration notified the

complainant of the Director-General's decision to endorse the Board's recommendations. That is the impugned decision in both complaints.

B. The complainant argues that, as she was recruited on the basis of a competition and in accordance with the Staff Regulations, she had a legitimate expectation of pursuing a career with the ILO. Her status was that of a regular official holding a fixed-term contract, and the fact that she was recruited within the framework of the YPCEP did not give the Office the right to define her status otherwise. Referring to various documents submitted by the Office to the Governing Body, a report by the Joint Inspection Unit of the United Nations system, as well as the general practice within that system, she contends that career prospects were clearly envisaged for young professionals and that the Office had in fact committed itself before the Governing Body to integrate those recruited under the YPCEP "into a regular post".

According to the complainant, there was no valid reason for the decision not to renew her contract, and by pointing to "budgetary constraints" to justify the contested decision, the Administration committed an error of fact. She submits that as from early 2006 her post was funded by INTEGRATION and that, when the decision was made not to renew her contract, that department did in fact have at its disposal sufficient resources to continue funding her post for a substantial period of time. However, instead of using the available resources to ensure her continuous employment, it chose to utilise them for the recruitment of new temporary staff. Moreover, although her transfer to INTEGRATION became effective in January 2005, it was not formalised in the Organization's Integrated Resource Information System (IRIS) until May 2007. Due to this administrative error, the records continued to indicate that she was employed in Moscow, whereas she was actually serving in INTEGRATION. As a result, INTEGRATION declined using the available resources to place her in a regular budget post and the Administration evaded its obligation to justify why she was offered contracts of less than one year and why other officials were given preference for transfer. This, according to the complainant, amounts to an abuse of authority.

The complainant denounces what she describes as the absence of genuine efforts by the Office to place her on a regular budget post. In her view, the conclusion that HRD was unable to identify a post matching her profile and competencies was drawn against the evidence and in disregard of essential facts. She asserts that not a single effort was made to regularise her situation after she was transferred to INTEGRATION and that the Administration failed to take advantage of the vacancies that became available in that department between 2005 and 2008 as a result of staff movements or the creation of new posts. In fact, the Administration filled these vacancies through the direct transfer of other officials, thereby breaching her right to equal treatment. Notwithstanding her repeated requests to be transferred to CODEV, the Office did not make any effort to place her there, even though she had substantive experience in development cooperation – including a doctoral dissertation, a series of publications and teaching experience in the field – and the Director of HRD had acknowledged that her profile was particularly suitable for that branch. In so doing, it demonstrated personal bias towards her. In her opinion, her appointment to any of the vacancies referred to above should have taken place through an in-grade transfer, i.e. in the same way as for other individuals recruited under the YPCEP.

She states that several opportunities for transfer to CODEV were allowed to pass by and that when a post became available in 2005, instead of granting her an in-grade transfer, the Administration decided to fill the post through a competition announced under vacancy No. 2005/38. She applied for that competition and was in fact identified as the second best candidate for the post, yet when a post with an identical job description was advertised in 2007 under vacancy No. 2007/68 and she applied for it, her name was not even placed on the shortlist. This, she argues, was contrary to the provisions of Annex I to the Staff Regulations, which require that all internal candidates who have successfully completed the Assessment Centre's process are to be invited to a technical evaluation, as well as of Article 4.2(g) of the Staff Regulations, which requires that in filling vacancies applications for transfer shall be given prior consideration. In addition, it was proof that the Administration abused its discretionary

power in drawing up the shortlist of candidates and that it treated her in a discriminatory manner. She asserts that, given her fully satisfactory performance and the Office's stated commitment to place her on a regular budget post, she should have been assigned to vacancy No. 2007/68 without a competition.

The complainant also contends that by failing to reply to her request for feedback on competition No. 2007/68 and to grant her an interview, the Director of PARDEV violated paragraph 13 of Annex I to the Staff Regulations, according to which the responsible chief is under an obligation, when he or she receives a request for feedback from an internal candidate, to organise a meeting in order to provide the requested feedback, as far as possible, within ten working days of receipt of the request.

She points out that despite her status as a well-qualified internal candidate, the Organization failed to give her priority treatment. Similarly, it disregarded relevant considerations such as her length of service, prior performance, age, gender and nationality. She states that she gave up a promising career in her country's civil service in order to join the ILO and that the Office's failure to implement the YPCEP properly caused irreparable damage to her career prospects. In addition, she was left without social protection because her employment was terminated during her pregnancy, in violation of Swiss employment law.

The complainant asks the Tribunal to set aside the impugned decision and to order her reinstatement with effect from 1 May 2008 or, alternatively, to award her material damages equivalent to five years' gross salary together with all related benefits, including pension and health insurance. She requests that the competition for the position of Programme Officer (Resource Mobilization) in CODEV (vacancy No. 2007/68) be cancelled and she claims material and moral damages, and costs.

C. In its reply to the first complaint the ILO objects to the receivability of the plea raised by the complainant that the delay in formalising her transfer to INTEGRATION constituted an

administrative error on the part of the Office. It contends that the complainant raised this plea for the first time in the proceedings before the Tribunal and has thus failed to exhaust internal remedies in that respect. With regard to the second complaint, it submits that the complainant is challenging competition No. 2007/68 and that, consequently, all elements of the complaint which are not directly relevant to that particular competition are irreceivable.

On the merits, it asserts that the complainant is wrong to assume that, because she was recruited within the framework of the YPCEP, she had a legitimate expectation to pursue a career within the Organization. It argues that the commitment made under the YPCEP was for training and professional development over a five-year period but not for continuous employment, hence the references in the programme's description to "assignments […] based on individual qualifications and personal preferences as well as institutional staffing needs". It points out that the complainant was not recruited to a clearly identified position financed by the regular budget and that any possibility of employment beyond five years was expressed in her contract in conditional terms. In fact, the express mention therein of Article 4.6(d) of the Staff Regulations clearly indicated that there should be no expectation of employment beyond the five-year period. It explains that as of 2002 the YPCEP ran into financial difficulties, which ultimately caused its discontinuance, and that due to its budgetary situation, the Office was not in a position to find a suitable solution for all those participating in the programme.

The defendant argues that the existence of genuine budgetary constraints was a valid reason for the decision not to renew the complainant's contract. Noting that this point was extensively discussed in the internal appeal proceedings, it refers the Tribunal to the Joint Advisory Appeals Board's finding that there were no financial resources available to finance her position beyond 30 April 2008. It explains that until then her position had been financed by a combination of resources, including deficit funding and a temporary budget allocation, which, as the Office pointed out in the course of the internal appeal, was not a long-term sustainable solution. In its

opinion, the impugned decision was taken by the Director-General in the exercise of his discretionary authority, was properly motivated and shows no flaw which would warrant its review.

The Organization considers that it was under no legal obligation to place the complainant on a regular budget post. It points out that Article 4.2 of the Staff Regulations makes no mention of directly assigning the holder of a fixed-term contract to a position financed by the regular budget, and that it only provides for direct appointments in exceptional cases. Moreover, there is no rule requiring that all internal candidates participating in a competition must be shortlisted or given priority treatment. As the Tribunal has repeatedly stated, preference by reason of internal candidate status or gender must be given effect only where candidates are evenly matched. According to the defendant, the complainant was fully aware that the proper way to regularise her employment status was through selection to a post following a competitive process. Although she protests against the fact that she was not selected for any of the available posts in CODEV through the regular process, she has not explained why she was suitable for these posts, nor has she proved the existence of any procedural flaw which might have deprived her of a fair selection process. Similarly, she has failed to establish that she actually suffered unequal treatment, because she has not shown that her situation was identical or comparable to that of other officials transferred to INTEGRATION. The defendant contends that, even in the absence of a legal obligation, it did make considerable efforts to maintain the complainant's employment beyond five years and to find a suitable regular budget post for her.

The Organization acknowledges that the Director of PARDEV failed to provide the complainant with feedback on competition No. 2007/68, but considers that such failure does not justify the cancellation of the competition, especially since the complainant was not even shortlisted for that particular vacancy. It contends that a combined reading of paragraphs 11 and 13 of Annex I to the Staff Regulations reveals that not all internal candidates are entitled to receive feedback, but only those who make it to the last stage of the process, i.e. those who are shortlisted, interviewed and whose

assessment is included in the report drawn up by the responsible chief. As the complainant was not placed on the shortlist of candidates, the Director of PARDEV was not in a position to give her any personalised comments. Furthermore, she may actually have considered that the feedback she provided on competition No. 2007/67 also applied to competition No. 2007/68 and that it was therefore not necessary to give a further reply. Emphasising the discretionary nature of an appointment decision and the Tribunal's limited power of review in that respect, the ILO submits that the complainant's candidature was subject to at least a preliminary evaluation by the Director of PARDEV and that her exclusion from the shortlist was based on an appraisal of her qualifications and experience. In effect, as confirmed by the Joint Advisory Appeals Board, the failure to provide feedback had no bearing on the selection process.

With regard to the complainant's argument that she was left without social protection because her employment was terminated during her pregnancy, the ILO submits that the impugned decision was taken for reasons completely unrelated to the complainant's pregnancy and that the Office did in fact act beyond its duty by ensuring that her health insurance would be extended beyond the usual period of six months following her separation so as to cover her medical expenses related to childbirth.

D. In her rejoinder to the first complaint the complainant asserts that she did raise the argument of an administrative error in her grievance to the Joint Advisory Appeals Board, albeit in slightly different terms, and that the complaint is therefore fully receivable. In her rejoinder to the second complaint she argues that the claims put forward in that complaint in connection with earlier vacancies in CODEV, including vacancy No. 2005/38, are receivable because they constitute the context within which the Administration decided not to shortlist her for competition No. 2007/68 and effectively to deprive her of a possible employment opportunity.

She presses her pleas on the merits, emphasising that she had the status of a regular staff member with legitimate career aspirations. She argues that, if the Organization has no policy on the expiry of

fixed-term contracts during pregnancy, it ought to rely on Swiss employment law, which prohibits termination of employment during pregnancy or during the 16 weeks following delivery. She reiterates her allegations of unequal treatment, noting that the majority of participants in the YPCEP were placed on a regular budget post without having to go through a competitive process.

In addition, she submits that the selection procedures for competitions Nos. 2007/67 and 2007/68 were vitiated. She rejects the contention that the Director of PARDEV may have thought that the feedback on competition No. 2007/67 also applied to competition No. 2007/68, pointing out that not only the titles of the respective posts were different but also the duties and the qualification requirements. She adds that in her reply to the request for feedback on competition No. 2007/67, the Director of PARDEV referred to selection criteria which were not publicly announced in the vacancy notice for that competition, thereby violating the principles of fair competition. She emphasises her qualifications, noting that the Assessment Centre and HRD found her competences to be adequate for successful operation at the P.3 and even the P.4 level. She fails to understand how it was possible for the Administration not to shortlist her for a post for which it had identified her as the second best candidate only a year earlier.

E. In its surrejoinder to the first complaint the ILO reaffirms its objection to receivability. With regard to the second complaint, it reiterates its position on the irreceivability of all elements of the complaint which are not directly relevant to competition No. 2007/68.

On the merits, it dismisses as unsubstantiated the arguments advanced by the complainant in her rejoinders. It explains that it does not contest the complainant's qualifications and skills but that these were simply not sufficient for her to be included in the shortlist of candidates for vacancy No. 2007/68. In its view, the argument regarding the reference by the Director of PARDEV to additional selection criteria is irrelevant, because it does not concern competition No. 2007/68, i.e. the competition the complainant is presently challenging. It rejects the proposition that the complainant should have been shortlisted for competition No. 2007/68 just because she had

previously been shortlisted for a different competition, noting that there was a different pool of candidates participating in each competition and that, in any case, being included in a shortlist in a given competition does not give rise to any automatic rights in subsequent competitions.

## CONSIDERATIONS

1. The complainant joined the International Labour Office in January 2001 in the framework of the five-year Young Professionals Career Entrance Programme (YPCEP) at grade P.2 and she was subsequently promoted to grade P.3. She completed the programme on 20 January 2006 and had several extensions of her fixed-term contract. During the period up to 30 June 2006 her contract was funded by a combination of resources from the Human Resources Development Department (HRD) and deficit funding. After two more contract extensions using funds from a temporary budget allocation, the complainant was notified on 29 February 2008 that, due to budgetary constraints, her contract would be allowed to expire on 30 April 2008, without further renewal. She contested that decision through a grievance to the Joint Advisory Appeals Board. The Board delivered its report on 17 November 2009, stating in its conclusion that "the Office [had] not misinform[ed] the [complainant] as to the reason for the non-renewal of her contract; that neither the YPCEP nor considerations relating to the [complainant's] gender, age, nationality or length of service nor her pregnancy required the Office to further renew her [fixed-term] contract; that the Office nevertheless [had] made extensive although ultimately unsuccessful efforts to find her a suitable placement; and that the [complainant's] allegation of discrimination was without foundation". Accordingly, it recommended that the Director-General reject her grievance as without merit.

2. Between 24 June and 25 August 2008 the complainant also filed nine grievances relating to her non-selection in nine separate competitions, including competitions for vacancies Nos. 2007/67

and 2007/68, requesting that the Joint Advisory Appeals Board recommend that the competitions be cancelled. The Board joined the grievances and delivered its report on 23 September 2009. It observed that all nine grievances related to recruitment and selection procedures which are subject to limited review. It found, inter alia, that "in all nine cases the [complainant's] candidature was subjected to at least a preliminary evaluation by the responsible chief and that, where she was not short-listed for interview by the evaluation panel, her exclusion was based on an evaluation of her qualifications and/or experience". It added that this finding was "especially important in the case of [competition] 2007/68 […] where the […] responsible [chief] had failed or refused to respond to the [complainant's] legitimate request for written feedback on the evaluation process." However, it considered, after having examined *in camera* the file of competition No. 2007/68, that "the evaluation and selection procedures themselves were not vitiated by the absence and denial of feedback by the responsible [chief], as this feedback intervenes *a posteriori*, that is after the Director-General has already appointed the selected candidate. Accordingly absence or denial of feedback [could] not have vitiated the selection procedure as such." In conclusion, the Board recommended to the Director-General that he dismiss the nine grievances as devoid of merit.

3. By a letter of 25 November 2009 the complainant was informed that the Director-General had accepted the Board's unanimous recommendations (dated 23 September and 17 November 2009) and had decided to reject all nine of her grievances against her non-selection in the respective competitions as well as her grievance against the non-renewal of her contract, all as being without merit. The complainant impugns this decision in two separate complaints before the Tribunal. In the first complaint she impugns this decision insofar as it concerns the rejection of her grievance against the non-renewal of her contract, and in the second complaint she impugns it insofar as it concerns the rejection of her grievance against her non-selection in the competition for vacancy No. 2007/68.

4. The Organization asks that the cases be joined and dealt with in a single judgment as the two complaints are closely linked. It explains that the substance of the second complaint overlaps with the first complaint insofar as it concerns the complainant's allegation that she was affected by decisions regarding some vacancies, which she mentions in both complaints. The complainant objects to joining the complaints, maintaining that the two cases are fundamentally different in fact and law, but she observes that the outcome of the second complaint might have substantial consequences for the first complaint.

5. The complaints, which contain some common claims and rest in part on the same arguments, are, to a large extent, interdependent, and the Tribunal finds it appropriate that they be joined, notwithstanding the complainant's position (see Judgments 2861, under 6, and 2944, under 19).

6. The complainant contends that she had a legitimate expectation of pursuing a career in the Organization due to her participation in the YPCEP, and that her participation in that programme could somehow be considered a guarantee of future employment by the Organization. The Tribunal finds that this contention is unfounded. The contractual terms which the complainant agreed to when entering the programme and again with each contract renewal are clear in that they are for fixed-term periods and create no expectation of renewal. She has not shown any evidence that the Organization had guaranteed her continued employment following her participation in the five-year YPCEP. Moreover, the Tribunal is convinced that the Organization put forth efforts, in good will, to place the complainant on a regular budget post. That it was ultimately unsuccessful does not detract from the efforts made.

7. The Tribunal also notes that the complainant's argument that her notification of termination during pregnancy violated Swiss employment law is mistaken. The complainant was on a fixed-term contract, the expiry date of which was set at the time of appointment and at each renewal thereafter. Moreover, the Offer of Appointment

specifically referred to Article 4.6(d) of the Staff Regulations which states, in relevant part, that "[w]hile a fixed-term appointment may be renewed, it shall carry no expectation of renewal or of conversion to another type of appointment, and shall terminate without prior notice on the termination date fixed in the contract of employment". The fact that the complainant was notified of the Organization's decision not to renew her contract upon its set expiry on 30 April 2008, and then shortly thereafter informed HRD that she was pregnant, is not in breach of any rules. The applicable rules in this case are those of the Organization and, as the Joint Advisory Appeals Board pointed out, ILO Staff Regulations make no provision relevant to this issue. In these circumstances, the Tribunal finds that the Organization is correct in stating that the fact

> "that there is no published policy (rule, regulation or office procedure) concerning the non-renewal of fixed-term officials whose contracts are due to expire during pregnancy, affirms that termination or non-renewal during pregnancy is only permitted for reasons completely unrelated to the pregnancy. When the contract of a fixed-term official is due to expire during pregnancy or maternity leave, it is consistent practice for the Organization to honor the contract period in full. However, the Organization does not extend the contract period for the sole purpose of continuing the period of employment to cover the pregnancy and maternity leave."

This position is not inconsistent with the Swiss employment law. In particular, the provision of the Swiss Code of Obligations, which the complainant cites, refers specifically to the termination of employment during the contract term, notified during protected periods (such as pregnancy, post delivery, etc.) and does not refer to the natural expiry of a fixed-term contract. The Tribunal further notes that the relevant provision of the Swiss Code of Obligations is fully in line with the general principle according to which everyone shall have the right to protection from dismissal for a reason connected with maternity, which is found in Article 33(2) of the Charter of Fundamental Rights of the European Union and Article 8 of the ILO Maternity Protection Convention, 2000 (No. 183).

8. The complainant argues that the Organization's inability to identify a regular budget post as justification for the termination of her contract on its expiry date constitutes an error of fact. She also asserts that the reason given for the non-renewal of her fixed-term contract is invalid and that new recruitments in INTEGRATION following her separation show that there were budgetary funds available for a position she could have occupied. These claims are unfounded. The Organization has provided detailed information regarding the financial constraints, which the Joint Advisory Appeals Board found to be sufficient to support the latter's justification for the non-renewal of her contract for budgetary reasons, and the complainant has not submitted any material to show that the Board's finding was flawed. In its report of 17 November 2009 on the complainant's grievance against the non-renewal of her contract, the Board stated:

> "[t]he detailed information provided by the Office at the Panel's request shows beyond doubt that, contrary to the [complainant's] allegations, genuine budgetary constraints were the reason for the non-extension of the [complainant's] contract. It confirms that the budgetary resources for Professional staff allocated to her unit for the 2008-2009 biennium were earmarked entirely for on-going staff positions, all of them, moreover, at more senior levels than the [complainant]."

9. In her submissions the complainant identified several colleagues who were transferred or assigned to posts which she believes she should have been given, but the Organization has rightly pointed out that it had no obligation to place her on a regular budget post by direct selection, and that at no point did YPCEP participants acquire any right or expectation higher than that of regular officials. Furthermore, her claims of discrimination and unequal treatment fail, as she has not shown any case in which she was in an identical or comparable situation to those who were treated differently. In fact, it can be noted that the colleagues that she identified as having been given preferential treatment over her were of higher grades with different contracts, including without-limit-of-time contracts, and in some cases financed by other departments or projects. Moreover, the complainant has failed to show that she should have been considered as more qualified for any of the posts for which she applied, or that

there were any procedural flaws in selecting the successful candidates. The Organization made a reasonable assertion that the fact of being "suitable" for a particular department does not result necessarily in an appointment and it did not share the complainant's assumption that she was supposed to be simply placed on any post.

10. The complainant argues that she should have been given priority treatment for employment opportunities in CODEV and that the Organization failed to shortlist her automatically for all competitions for which she applied. These arguments are likewise unfounded. The Organization must follow its own rules for fair competition, and to show favouritism to her due to her expiring contract, gender or nationality, would be unfair to all other applicants. In her submissions the complainant repeatedly mentions her gender and nationality as special considerations for the priority treatment that she expected from the Organization. She seems to have misunderstood the idea behind the quota system. While it is true that the Organization makes special efforts to attract women and employees from non- and under-represented countries in order to recruit and maintain "a staff selected on a wide geographical basis, recognizing also the need to take into account considerations of gender and age", it shall take into consideration factors such as age, gender and nationality only when deciding among equally qualified candidates. Furthermore, the complainant's claim that she should have been given priority in selection for a transfer within grade on the basis of Article 4.2(g) of the Staff Regulations is unfounded. That provision is to be interpreted in the context that in situations in which candidates are found to be of equal or comparable merit, account shall be taken of applications from former officials whose appointments were terminated in accordance with the provisions of Article 11.5 (Termination on reduction of staff), of applications for transfer and of claims to promotion. That is to say that the complainant's qualifications and experience were not found to be of equal or comparable value to the qualifications and experience of those who were shortlisted.

11. Moreover, as stated in Article 4.2(a)(ii) of the Staff Regulations:

> "Without prejudice to [Article 4.2(a)(i)], officials shall be selected without discrimination on the basis of age, race, gender, religion, colour, national extraction, social origin, marital status, pregnancy, family responsibilities, sexual preference, disability, union membership or political conviction."

The Tribunal points out that this rule does not mean that a person should be given special status and preferential treatment on the basis of any of these criteria. Indeed, the complainant's belief that her assessment within the framework of the Assessment Centre in the context of a given competition automatically entitles her to be shortlisted for future competitions is mistaken. What the complainant was entitled to under the applicable provisions was a thorough consideration of her application as an internal candidate, and with respect to the competitions referred to in her complaints the Tribunal is satisfied that this requirement was fulfilled. The fact that she was not shortlisted for some of the competitions and that her shortlisting for other competitions did not lead to her selection for appointment does not indicate that her candidacy was not properly considered.

12. The complainant asserts that there was an absence of genuine efforts to place her in a regular budget post, especially in CODEV, that she was not given priority treatment in the competitions for which she applied, and that she was not treated equally with regard to her transfer to INTEGRATION. She claims that she considered that necessary instruction for priority treatment of her candidacy should have been given as a means of ensuring alternative employment opportunities for her, taking into account that her position was affected by budgetary constraints. She also states that she should have been given prior consideration in accordance with Article 4.2(g) of the Staff Regulations, given that her application was for a transfer in the same grade. The Tribunal disagrees. It should be noted that Article 4.2 governing the filling of vacancies specifies under 4.2(a)(ii) quoted above that officials shall be selected without discrimination and goes on to state under 4.2(e) that transfer in the same grade or appointment by direct selection by the Director-General shall be the normal method

of filling vacancies for Chiefs, Directors and other high-level officials which is not the complainant's level. The rules governing the filling of vacancies at her level, i.e. for grades G.1 to P.5, are listed under 4.2(f) which states that the normal method shall be competition: "[t]he methods to be employed shall comprise transfer in the same grade, promotion or appointment, normally by competition". Exceptions from competition are limited to the following situations:

> "– filling vacancies requiring specialized qualifications;
> – filling vacancies caused by upgrading of a job by one grade or in the case of a job upgraded from the General Service to the National Professional Officers category or to the Professional category or in the case of a job upgraded from the National Professional Officers to the Professional category by one grade or more;
> – filling vacancies in urgency;
> – filling other vacancies where it is impossible to satisfy the provisions of article 4.2(a) above by the employment of any other method."

The Tribunal notes that the complainant's situation does not come within any of the above exceptions and her claims that she should have been appointed without competition and that she should have been given prior consideration are unfounded.

13. The complainant alleges that her misplacement in the Organization's Integrated Resource Information System (IRIS) between Moscow and INTEGRATION resulted in her not being placed properly in a regular budget post. The Tribunal is of the opinion that, as the Organization correctly points out, she was not misplaced in IRIS, but there was simply a clerical error which led to her name being left off the printed staff list even though she was still listed properly in the online database.

14. Lastly, the complainant submits that the absence of a reply by the responsible chief and refusal to organise an interview to provide her with feedback regarding competition No. 2007/68 is a violation of paragraph 13 of Annex I to the Staff Regulations. This claim is founded. As the Joint Advisory Appeals Board stated in its report of 23 September 2009 "the absence as well as denial of feedback by the responsible chief is a violation of paragraph 13 of

Annex I to the Staff Regulations". While the Board found that "the evaluation and selection procedures themselves were not vitiated by the absence and denial of feedback by the responsible [chief]", the Tribunal finds that although this flaw does not vitiate the evaluation and selection procedures, it constitutes a breach of the Organization's duty of care and on this ground the complainant is entitled to an award of moral damages.

15. Considering the above, the Tribunal awards to the complainant moral damages in the amount of 5,000 Swiss francs. All other claims are dismissed as unfounded. As the complainant succeeds in part, the Tribunal also awards her costs in the sum of 1,500 francs.

## DECISION

For the above reasons,

1. The ILO shall pay the complainant moral damages in the amount of 5,000 Swiss francs.
2. It shall also pay her costs in the sum of 1,500 francs.
3. The complaints are otherwise 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