Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

114th Session **Judgment No. 3170**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Miss A. P. against the World Trade Organization (WTO) on 1 March 2011 and corrected on 9 May, the Organization's reply of 16 June, the complainant's rejoinder of 19 September, corrected on 22 September, the WTO's surrejoinder of 28 October 2011, the documents supplied by the complainant on 1 November 2012 at the Tribunal's request, together with her comments, and the Organization's final submissions of 7 November 2012;

Considering Articles II, paragraph 5, and VII 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 may be found in Judgments 3010 and 3131 concerning the complainant's first and third complaints. It may be recalled that, in May 1995, the complainant, who had been working for three years in the United Nations Joint Medical Service administered by the World Health Organization (WHO), was

appointed Head Nurse of the WTO Medical Service, although she was still employed by WHO under a five-year contract which was due to expire on 31 May 2006. After the WTO decided to leave the Joint Medical Service and set up its own Medical Service, it employed the complainant under a two-year fixed-term contract commencing on 1 March 2006, which was subsequently renewed. WHO then placed her on leave without pay.

Working relations between the complainant and the Head of the Medical Service, Dr M. – her first-level supervisor – began to deteriorate after the complainant had expressed doubts about Dr M.'s competence and organisational skills, and in November 2006 a mediator was appointed at the initiative of Dr M. In an e-mail of 27 November 2006 the complainant said that she considered that this colleague was "too close" to her supervisor and she enquired about the possibility of appointing another mediator. She took a number of additional steps and, in particular, contacted the Director of the Human Resources Division. On 14 May 2007 Dr M. sent a memorandum to the Office of the Director-General concerning the accusations of malpractice which her subordinate had levelled at her. She drew attention to "the comments in [the complainant's] most recent performance evaluation concerning not only her work management but also her behaviour", and she stated that she thought it necessary to "refer [the complainant] to medical colleagues at WHO in charge of her occupational health file, who c[ould] ask for any further investigations", should they consider this to be advisable. In April 2008 the complainant again sought mediation, but no action was taken on her request.

In the meantime, the Director-General had asked the Joint Advisory Committee to put forward recommendations as to the type of medical service which would be best suited to the needs of the Organization and its Secretariat. In the wake of this committee's report, the Director of the Human Resources Division, acting on a proposal of the Director-General, commissioned an "audit to determine the appropriate role, functions and structure of the Medical Service". In his report of 3 March 2008 the auditor stated that,

although by nature a medical service was difficult to run, "firm, clear decisions ha[d] to be taken by senior management". He added that "a trial period lasting several months, after a serious warning [directed at both Dr M. and the complainant] and a call to collaborate actively, could theoretically be useful", but that there seemed to be little prospect of success "given the level of personal antagonism". In his view, the alternative solution was to refocus the service on its primary purpose of occupational health, to outsource the other activities and to downsize the service accordingly.

On 26 November 2008 the complainant was informed that, owing to a restructuring of the Medical Service which entailed the abolition of her post, her contract would not be renewed upon its expiry on 28 February 2009.

By a memorandum of 18 February 2009 the Director-General notified her that, since it was impossible to reassign her, her contract would be terminated with effect from 31 May. He added that, as the restructured Medical Service was to become operational on 1 March 2009, he had decided to grant her a payment in lieu of notice.

The complainant wrote to the Director of the above-mentioned division on 27 February 2009, i.e. on the eve of her separation from the Organization, asking him to open an investigation into Dr M.'s attitude towards her over the previous four years – which she termed "harassment". The investigator who was ultimately appointed was notified of his terms of reference on 18 February 2010. In his report of 28 November he concluded that the complainant had not suffered any harassment. By a letter of 2 December 2010, which constitutes the impugned decision, the Director-General informed her that he was accepting the conclusions of that report. He considered that "no particular action" was necessary and he authorised the complainant to file a complaint directly with the Tribunal, if she so wished.

B. The complainant first submits, on the basis of several paragraphs of the Standards of Conduct applicable to the staff of the WTO Secretariat, that the attitude of Dr M., which consisted in belittling

her, intimidating her, sidelining her and preventing her from doing her work, constitutes harassment in that Dr M. accepted and even intended that for years she would feel humiliated and rejected. In her opinion, in retaliation for her criticism of her supervisor, the latter tried to "destroy [her] reputation" by casting doubt on her physical and mental health and by asking WHO doctors to examine her without obtaining her prior consent. In her view, Dr M. thus prevented her from finding a job in one of the other international organisations based in Geneva. The complainant also denounces her supervisor's disparaging attitude towards her in the presence of patients or colleagues; for example, at a service meeting on 24 September 2008, she upbraided her for challenging her 2006 and 2007 performance evaluation reports. She adds that her supervisor gradually decreased her responsibilities until her duties were more akin to those of an administrative assistant than to those of a nurse. As proof of this, she refers in particular to the objectives which Dr M. set for her in her performance evaluation report for 2008. She emphasises that, although she had received excellent reports for more than ten years, her supervisor rated her performance as unsatisfactory in 2006, 2007 and 2008. She infers from this that these assessments were "biased" and that they were in fact further retaliatory measures (see Judgment 3010 and Judgment 3171, delivered this day, concerning the complainant's second complaint). Lastly, she lists a number of vexing measures to which she was subjected, such as the fact that Dr M. ordered the replacement of her office furniture in her absence, without her prior consent. She stresses that, on that occasion, her supervisor asked the security services to search her office for the documents she had gathered to prepare her appeals. She disputes the definition of harassment which was employed in the investigation on the grounds that, according to the Tribunal's case law, the issue of whether there was an intent to harass was irrelevant, and she considers that the investigation report is worthless.

Secondly, the complainant asserts that, whereas paragraph 14 of Administrative Memorandum No. 941 lays down that mediation is available to all staff members faced with a problem of any type in

the workplace, the WTO failed in its duties in this respect by not appointing a competent, impartial mediator. She states that, because in her view the mediator appointed in November 2006 did not guarantee the impartiality required by that administrative memorandum, she requested the appointment of another mediator, but that her request was ignored. She emphasises that she again sought mediation in April 2008, but that the Organization considered that, at that stage, such a procedure would be too time-consuming and too costly.

Thirdly, the complainant submits that the Organization also failed in its duty as far as the investigation is concerned. She contends that the WTO took a year to open this investigation, which was therefore not conducted "promptly", in breach of paragraph 19 of the Standards of Conduct. She takes the WTO to task for having opened a "preliminary investigation", though no such stage is provided for in the applicable texts, and for then having further delayed the process by pretending that it was having difficulty in finding an investigator. The complainant also criticises the Organization for having attempted unduly to influence the findings of the investigation, particularly by denying the investigator access to the medical files proving Dr M.'s incompetence and by exchanging "secret" communications with him, sometimes through its Legal Counsel. In her opinion, the investigation was not thorough and her rights of defence were not respected.

Lastly, the complainant contends that she was harassed by the WTO itself. To support this allegation she points out that her access to her e-mail account was suspended on 28 February 2009, although she had asked to keep it until 31 May. She also complains of discriminatory treatment, because some people retain unrestricted access to their e-mail accounts for several months after separation from the WTO. In addition, it was decided that as from March 2009 she would have only limited access to the Organization's premises. She emphasises that she has been kept under close watch whenever she has had occasion to visit the WTO and that on 23 April 2010 she was detained in the security officers' office against her will and in full view of some staff members, which exacerbated her feeling of

humiliation. She adds that on 26 February 2009, when she held a small farewell reception, the Human Resources Division again sought to intimidate her by summoning her to a meeting in order to remind her, in a very menacing tone, of her duty of confidentiality. Furthermore, she was denied the assistance of a staff member at two important meetings with the Administration, one of which concerned her separation; in her view this was a breach of the applicable rules.

Principally, the complainant asks the Tribunal to find that she was the victim of harassment and to award her moral damages of at least 100,000 Swiss francs. Subsidiarily, she asks the Tribunal to order the opening of a fresh investigation and to award her moral damages of at least 50,000 francs. In each case, she seeks the setting aside of the impugned decision and at least 10,000 francs in costs.

C. In its reply the Organization states that the investigation, during which the complainant had ample opportunity to express her views, established that she had not suffered any harassment. In its opinion, the situation which the complainant tries to depict as harassment was mainly due to the fact that she was unable to adapt to a new professional environment. Having worked virtually without supervision for some ten years, she was placed under the authority of Dr M., whom she regarded as incompetent and whose presence in the office gradually increased from 20 to 80 per cent of working hours, a factor which aggravated the existing difficulties.

The WTO acknowledges that in July 2008 the Director-General decided not to set up a mediation process on the grounds that it would be too time-consuming and too costly. However, it submits that the complainant is time-barred from challenging that decision. It draws attention to the fact that an auditor had already been appointed by the time she sought mediation. As he had recommended that some of the Medical Service's activities should be outsourced, the Director-General considered that there was no justification for such a procedure, because the protagonists were possibly going to leave the Organization's service.

As far as the investigation is concerned, the Organization explains that the complainant, who had asked for the opening of an investigation on 27 February 2009, was invited on 3 March to submit any evidence in her possession, but that she did so only on 9 April. As the material she had submitted was deemed sufficient to justify the opening of an investigation, a search began for an investigator. This process had to be interrupted on 8 June, because by then the complainant was contemplating the negotiation of an amicable settlement of all the proceedings which she had initiated. The Organization says that, in the end, it was the complainant herself who in December 2009 proposed the person who was eventually appointed to conduct the investigation. It comments that the definition of harassment used in the investigation was contained in the investigator's terms of reference, a document which had been submitted to the complainant before its adoption and to which she had not objected. It adds that, as this definition referred to "repeated actions the purpose or effect of which" is to impair the working conditions of the person concerned, these terms of reference covered both intentional harassment and objective harassment, the latter being irrespective of the intent behind it. The WTO admits to having contacted the investigator, mainly about the duration and cost of the investigation. It explains that, although its Legal Counsel intervened on three occasions, he did so in order to facilitate the investigator's task.

Lastly, the WTO endeavours to show that it never harassed the complainant. It explains that access to officials' e-mail accounts is automatically suspended on the day of their separation, but that some officials retain their access after the end of their contract in order that they can complete a piece of work. It emphasises that, even though the difficulties encountered by the complainant could only be ascribed to her own disorganisation, the information technology services assisted her and reactivated her e-mail account for a month to enable her to consult any e-mails sent to her. The WTO states that the complainant could not freely enter its premises once she was no longer a staff member. Moreover, the restrictions imposed on her made it possible to ensure that any documents which she might require for her

submissions would be obtained by official channels. With regard to the incident of 23 April 2010, it asserts that at no time was the complainant detained against her will. The security officers stepped in because she was leaving the Organization's premises with several binders which she was ultimately allowed to take with her without their contents being checked. In the defendant's opinion, it was fully justified to call the complainant to a meeting on 26 February 2009 – since she was available only on that date – because rumours were circulating that she had breached her duty of confidentiality. It states that the complainant was always authorised to be assisted by a person of her choice, except during the two meetings with the Administration to which she refers. On neither occasion was the Organization bound to grant such authorisation, for under WTO internal rules an official is entitled to assistance during a meeting with the Administration only when this is necessary in order to ensure that the person concerned can defend his or her rights during that meeting.

D. In her rejoinder the complainant enlarges on her pleas. She deplores the fact that the WTO has chosen to "hide" behind the investigation report, for it is silent about most of the examples of harassment which she had given and, in her opinion, it is tainted with errors of fact and one serious error of law.

E. In its surrejoinder the WTO maintains its position. It considers that the complainant's criticism of the investigation report is unwarranted.

F. At the Tribunal's request, the complainant has supplied a copy of the investigator's terms of reference, and she explains that, as more than two and a half years have elapsed since the investigation was opened, she cannot remember whether she formally approved these terms as the Organization's Legal Counsel had invited her to do.

G. In its final submissions the WTO states that it has no evidence that the complainant ever formally approved the terms of reference in

question, but that there is nothing in the investigator's report or in the minutes of the hearings that he held to indicate that she ever raised any objections.

CONSIDERATIONS

1. Shortly after the WTO had set up its new Medical Service, differences of opinion arose between the complainant and her first-level supervisor, Dr M., who had been appointed Head of the Medical Service on 1 March 2005. It is to be noted that since 1999 Dr M. had acted as a locum at the WTO and had then worked part-time on a 20 and then a 50 per cent basis. Her relations with the complainant had been most cordial at that time. An increase in her working hours to 80 per cent substantially altered the situation of the complainant, who until then had been the only health officer present every day at the WTO and who in practice enjoyed considerable autonomy.

2. In November 2006 a mediator was appointed at the initiative of Dr M. in an attempt to resolve the differences of opinion between the two protagonists. However, the following month, the complainant requested the cessation of this process because she had reservations as to the mediator's neutrality.

3. The complainant expressed doubts about Dr M.'s competence and their antagonism steadily increased to a level where it culminated in angry outbursts; in particular, their dispute was loudly aired in public on 5 December 2006 at a general staff meeting attended by the Director-General, which had been called to explain the measures which would be taken in the event of an avian influenza pandemic and where the complainant bitterly vented her frustration at not being associated with discussions on that matter. Worsening relations between the two protagonists seriously impaired working conditions in the Medical Service and were reflected in a growing number of clashes between them throughout 2007 and 2008.

4. On 29 February 2008 the Director of the Human Resources Division informed the complainant that, since her overall rating in her performance evaluation reports for 2006 and 2007, which had been drawn up by Dr M., had been "does not fully meet performance requirements", her contract would be renewed for only one year, until 28 February 2009.

5. On 15 April 2008 the complainant lodged an internal appeal against that decision and at the same time sought the opening of a new mediation process under Staff Rule 114.1.

6. In the meantime, the WTO had begun to contemplate redefining the functions and structure of the Medical Service in response to recommendations from its Joint Advisory Committee and an audit commissioned from an expert from Geneva University Hospital who had issued his report on 3 March 2008. This resulted in a thorough restructuring of the service as of 1 March 2009 and, in particular, in the abolition of the posts of both Dr M. and the complainant.

7. On 26 May 2008 the Director-General informed the complainant that he was suspending the consideration of her request for mediation pending receipt of the comments which she had been asked to provide on the above-mentioned audit report. In the event, he chose to take no action on this request, although the complainant had in fact supplied these comments.

8. On 18 February 2009 the Director-General issued his final decision on the complainant's appeal against the aforementioned decision of 29 February 2008. This final decision formed the subject of the complainant's first complaint on which the Tribunal ruled in Judgment 3010, delivered on 6 July 2011, where it rejected the complainant's claims concerning the decision to abolish her post and dismissed her arguments on various other points, but set aside the decision to terminate her contract which had taken effect on 31 May 2009. It found that this decision was vitiated by the fact that there had

been no proper prior consideration of the matter by the Appointment and Promotion Board, as required by Staff Regulation 10.8. The Tribunal therefore ordered the WTO to pay the complainant the salary and other benefits which she would have received until the date on which her contract would otherwise have expired, as well as moral damages in the amount of 15,000 Swiss francs.

9. On 27 February 2009, i.e. on the eve of her separation from the Organization, the complainant had submitted a memorandum in the form of a complaint requesting the opening of an investigation to establish that Dr M.'s offensive behaviour towards her constituted moral harassment. In memoranda of 8 April and 6 November 2009 these accusations were later widened to include other WTO officials (whom the complainant now no longer seems to implicate) and the Organization itself.

10. The WTO initially decided to hold a "preliminary investigation" and, after a period of almost a year had elapsed for reasons over which the parties are bitterly divided, on 18 February 2010 an independent expert appointed by mutual agreement was given terms of reference, dated 12 January 2010, for conducting an investigation into these allegations of harassment.

11. The investigator issued his report on 28 November 2010 after holding numerous hearings and examining the abundant documentation related to the case. Although he noted the existence of "isolated incidents" ascribable to some of the persons implicated as well as "shortcomings" on the part of the Organization, he concluded that the complainant had not suffered harassment.

12. By a decision of 2 December 2010 the Director-General endorsed the investigator's conclusions and dismissed the complaint of harassment lodged by the complainant.

13. That is the decision impugned in this case. In addition to seeking to have it set aside, the complainant principally asks the

Tribunal to find that she was the victim of harassment. Subsidiarily, she asks the Tribunal to order the opening of a fresh investigation. She also seeks an award of moral damages, the amount of which is higher in the former case, and costs.

14. It must be noted that neither Judgment 3010 nor Judgment 3131, delivered on 4 July 2012, in which the Tribunal ruled on the complainant's third complaint, dealt with the merits of the harassment allegations forming the subject of the instant case.

15. The complainant has requested the convening of a hearing. In view of the abundance and sufficient clarity of the submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

16. In support of her claims the complainant refers to numerous specific acts on the part of either Dr M. or the WTO which, in her opinion, demonstrate the existence of the alleged harassment.

17. In replying to the complainant's arguments, the defendant Organization essentially confines itself to recalling that, in his report, the investigator concluded that the facts in question could not be deemed to constitute harassment.

18. However, the Tribunal finds that, while this report evidences a high ethical standard and irreproachable honesty on the part of its author, it is tainted with at least two of the substantive flaws on which the complainant relies. Consequently, it cannot be regarded as sound.

19. As the WTO Staff Regulations and Rules do not contain a legal definition of "harassment", a definition of this notion was supplied in the terms of reference of 12 January 2010 which were given to the investigator. These terms of reference specified: "Harassment consists inter alia in a set of repeated actions the purpose or effect of which is to impair working conditions in a manner likely to violate a

person's rights at the workplace, undermine his or her dignity, damage his or her physical or mental health, or jeopardise his or her professional future."

20. The Tribunal finds that several of the specific acts on which the complainant relies in support of her allegations are not mentioned at all in the above-mentioned report. Of course, it is inevitable in a case of this kind that the arguments of the various participants in the procedure are summarised fairly briefly. But as in this case harassment was defined – in keeping with the commonly accepted meaning of this term – as a "set of repeated actions", in other words as a series of clearly delineated acts, isolated or not, which demonstrate its existence, the investigator necessarily had to study these various acts in detail. More precisely, it was incumbent upon him to indicate in his report whether each of them, or at least those which are of great significance, could be regarded as proven and, if so, whether they should be considered as constituting harassment. In this case, where he concluded that there was no harassment of the complainant, by confining himself to the examination of only some of these acts without explaining why others could not be regarded as forming part of a "set of repeated actions", the investigator did not carry out all the checks that were needed in order to provide this conclusion with a firm basis, and the reasoning underpinning his report was therefore inadequate to say the least.

21. Furthermore, it is clear from the wording of the above-mentioned terms of reference that harassment covered all behaviour "the purpose or effect" of which was to impair the complainant's working conditions in a manner likely to undermine her fundamental rights or dignity. This definition therefore encompassed not only intentional harassment, but also harassment which, irrespective of the perpetrator's intent, could objectively result from acts which were perceived by the victim as undermining her fundamental rights or dignity (for a case where a staff regulation defining harassment in a similar manner was applied, see Judgment 2370, under 8 and 10). Moreover, this is a similar definition to that employed by the Tribunal

when it has to determine the existence of harassment in cases where the scope of this notion is not otherwise specified in the legal texts applicable to the dispute (see Judgment 2524, under 25).

22. It is plain from the above-mentioned report that, in reality, the investigator went no further than trying to ascertain whether the alleged acts might have been prompted by an intention to harass the complainant. This can be seen, for example, from the references, with regard to some of the behaviour of which WTO officials are accused, to the absence of any "deliberate intention to harass" the complainant or, with regard to the behaviour of the person chiefly implicated, to the fact that it does not appear that "professional incompetence [on her part] led [her] to harass" the complainant. What is more, in the concluding paragraphs which he devotes to "[t]he lack of harassment on the part of the incriminated persons" and to "[t]he attitude of the Office of the Director-General and the Human Resources Division", the investigator twice states that the acts in question were not, in his opinion, "specifically aimed at undermining [the complainant's] rights and dignity, damaging her physical or mental health or jeopardising her professional future" and that they "d[id] not as such constitute harassment". In so doing, the investigator has obviously forgotten that it was incumbent upon him, before arriving at these final conclusions, to check whether these same acts did not objectively have the "effect" of entailing such consequences. By merely trying to ascertain whether the complainant had been subjected to intentional harassment, the investigator both committed an error of law and failed to abide by his terms of reference.

23. It follows from the foregoing, without there being any need to examine the complainant's other pleas concerning the validity of the investigation, that the report forming the basis of the impugned decision was unsound.

24. In view of the time which has elapsed since the disputed facts, and as both Dr M. and the complainant have now left the WTO,

ordering the holding of a fresh investigation would plainly no longer serve any useful purpose.

25. The Tribunal itself will therefore examine the merits of the complainant's allegations of harassment.

26. As the following considerations will show, several of the acts on which the complainant relies demonstrate the existence of what may be described at least as objective harassment by her first-level supervisor.

27. First, the evidence shows that on 14 May 2007 her supervisor sent a memorandum to the Office of the Director-General where, in essence, she wondered about the complainant's mental health and asked the WTO to convey her concerns in that connection to her "medical colleagues at WHO in charge of [the complainant's] occupational health file" in order that they might decide whether it was necessary to examine her. Dr M. informed the complainant that she had sent this memorandum, but the complainant was unable to obtain a copy of it at the time, although she requested one. Dr M. had also openly discussed this subject with the Director of the WHO Health and Medical Services, as is shown by the minutes of her hearing by the investigator, and, it seems, with another doctor from those services. Quite apart from the question of whether these acts breached the ethical duties of Dr M., which is only of limited importance to this dispute, these steps were undeniably hurtful to the complainant. Indeed, doubts were thus cast on her mental balance, in a cavalier fashion, in a document addressed to her supervisors or in conversations with officials from the service to which she had previously belonged, whereas there is nothing in the file to suggest that any questions about her mental state had ever arisen before. In addition, Dr M.'s insinuations were likely to damage the complainant's reputation in the WHO Health and Medical Services and, if they were more widely disclosed, in the medical services of other international organisations which were the complainant's potential future employers.

28. Secondly, the complainant describes various incidents where Dr M. denigrated or belittled her in the presence of colleagues or patients. In the Tribunal's view, one of these incidents was particularly serious, namely that where an e-mail was sent to the complainant the day after the above-mentioned meeting concerning the measures to be taken in the event of an avian influenza pandemic. In this message of 6 December 2006, a copy of which was sent to the two secretaries of the Medical Service and which, as its terms indicate, merely confirmed what had been said on this matter at a service meeting held the previous day, Dr M. sharply took the complainant to task for her statement at the presentation the previous day, which she described as "completely out of place and inappropriate in that context", and "ask[ed her] to make sure that that d[id] not happen again". While it is clear that the complainant's behaviour at that presentation was indeed open to serious criticism, it is no less shocking that this criticism was thus levelled at her in full view of her colleagues, which was humiliating. Furthermore, Dr M. referred in this e-mail to the complainant's wish to halt the mediation process which had commenced a few weeks earlier. Apart from the fact that sending a copy of this message to the two secretaries in the service breached the confidentiality of that process, it was likely to give them the impression that the complainant was responsible for the deteriorating relations between the two protagonists, which could only cause her injury.

29. The complainant also contends that, during a service meeting on 24 September 2008, Dr M. upbraided her for having lodged internal appeals against her performance evaluation reports for 2006 and 2007, saying that such a step tarnished the image and hampered the functioning of the service. The Tribunal notes that, not only could this comment be perceived as retaliation against the lodging of these appeals, but it was also likely, once again, to fuel resentment among the complainant's colleagues.

30. Similarly, the complainant complains that during a service meeting on 15 May 2007 Dr M. had said that she had been "extremely

shocked by […] her attitude" in connection with the taking of a day's leave, and that in April 2008 Dr M. had reprimanded her in front of a patient by claiming that the treatment she had given that person amounted to a professional error. The Tribunal can only find that these acts were likewise extremely disagreeable for the complainant.

31. Thirdly, the complainant taxes her first-level supervisor with having adopted a variety of measures to decrease her responsibilities or to hamper her in her work. She contends in this connection that Dr M., contrary to previous practice, had ordered her to carry out vaccinations only in her presence, that she no longer allowed her to manage the stock of first-aid kits or that she had refused her permission to attend training in the use of a new cardiac defibrillator. The Tribunal considers that the measures in question were indeed likely to make the complainant feel downgraded and frustrated.

32. The complainant's submissions on many other points will not, however, be accepted by the Tribunal. On the one hand, the veracity of some of her allegations is not formally borne out by the evidence in the file. This applies, for example, to the statement that Dr M. ordered the security services to search her office for the documents she had gathered in support of her appeals. On the other hand and above all, the Tribunal considers that the reasonable explanation for some of the acts for which Dr M. is reproached is that she was engaging in the normal exercise of a supervisor's power of evaluation, or that they were dictated by expediency. They will not therefore be deemed to constitute harassment (see Judgments 2370, under 17, 2524, under 25, or 2587, under 8). In particular, the fact that the objectives set for the complainant in her performance evaluation report for 2008 were mainly related to administrative tasks rather than medical duties will not be interpreted as an intrinsic downgrading of her functions. The head of the service might have had good reason to consider that in that report it was necessary to focus on improving the complainant's performance in areas where shortcomings had been noted, without this calling into question her other functions. Similarly, the fact that the complainant was not allowed to attend the meetings of

the Crisis Management Team concerning avian influenza cannot be regarded as bullying, since participation in the team's work was ordinarily reserved for the Organization's senior management and this body dealt with strategic planning issues that were unrelated to the complainant's duties.

33. However, the facts referred to earlier, the substance of which is not disputed by the WTO, are sufficient proof that the complainant was the victim of harassment, at least of an objective kind, by her first-level supervisor. This finding, which has been reached by the Tribunal at the end of proceedings to which Dr M. is not a party and in which she has therefore been unable to comment, may not under any circumstances be used against her in any context other than that of the instant judgment. The conclusion is, however, that the WTO, which has a duty to protect each of its officials, has incurred liability towards the complainant on account of this harassment and must therefore be ordered to redress the injury which she has thus suffered.

34. The Tribunal notes that, in fact, the complainant's conduct at the material time was also very much open to criticism and that she largely contributed to creating the conflict of which she was a victim. This situation plainly originated in the psychological clash between two strong-willed persons, one of whom found it hard to accept that the other called into question the independence which she had formerly enjoyed. In view of the incessant squabbling between the protagonists, both of whom had alerted their supervisors to the serious difficulties ensuing from this situation, it was up to the Organization promptly to take the appropriate action. As the expert from Geneva University Hospital who conducted the audit of the Medical Service recorded in his report, the complainant was in a state of "deep distress", while the investigator, on the basis of the statements of witnesses whom he had interviewed, emphasised in his report that Dr M. was suffering greatly. By allowing this very tense situation, which poisoned working conditions, to persist for more than three years, the Administration of the WTO displayed unacceptable passivity given the serious nature of the circumstances.

35. The complainant also submits that she was the victim of various acts of harassment ascribable to the Organization itself.

36. Once again, the Tribunal will not accept all of the complainant's submissions in this respect. For example, she complains that her e-mail account was suspended as soon as she effectively separated from the WTO on 28 February 2009, whereas she had asked to be able to use it until her contract expired on 31 May. The Organization's usual practice in such cases appears to be a reasonable explanation for the denial of this request. Moreover, the WTO asserts, without being effectively contradicted, that the complainant's e-mail account was reactivated for a month so that she could consult the e-mails which had been sent to her.

37. However, the complainant also asserts that, after her separation, the WTO introduced specific security arrangements to control her access to the Organization's Headquarters and her movements within the building which went beyond the normal constraints placed on the general public. She emphasises that, on one of her visits on 23 April 2010, on leaving the premises she was stopped and detained at the security officers' office for one and a half hours before being authorised to leave, because the Organization wished to make sure that she had not unlawfully obtained the documents which she was about to take away. Lastly, she maintains that on 26 February 2009, the day of her "farewell drink", the Human Resources Division called her to a meeting in order to remind her, in menacing tones, that her separation from the Organization did not release her from her duty of confidentiality. The WTO endeavours to justify this severe treatment of the complainant by the fact that the main purpose of her visits was to obtain material to support her submissions in her disputes with the WTO and that "rumours were circulating suggesting that [the complainant] may not have fully complied with her duty of confidentiality regarding her dispute with her supervisor". The Tribunal is of the opinion that, as these rumours were not substantiated, the latter consideration is insufficient to warrant subjecting the complainant to such brutal and humiliating

measures, which were undoubtedly dictated more by a desire to intimidate her than by genuine necessities of the service.

38. The Tribunal is also surprised by the complainant's statement that she was denied the assistance of a staff member at the meetings to notify her of the termination of her contract and to discuss the question of her applying for the new post of nurse which had been created in the restructured Medical Service. While the WTO is right in saying that it was not bound to accede to this request, this gratuitous refusal is no less shocking in that it deprived the complainant of the opportunity to defend her interests as best she could during meetings of signal importance for her career.

39. In light of these various circumstances, the Tribunal will find that the WTO as an organisation also subjected the complainant to harassment which likewise calls for redress.

40. The complainant also takes the Organization to task for failing to accede to the request for mediation which she submitted on 15 April 2008 on the basis of Staff Rule 114.1.

41. The Tribunal will not accept the objection to receivability raised on this point by the WTO, which argues that any challenge to the decision rejecting this request is time-barred. Indeed, the Organization, which merely states that this decision "was taken in July 2008", has not established that it formally notified the complainant of that decision at the time in such a way that the prescribed period for lodging an appeal began to run.

42. As the Organization itself admits in its written submissions, the reason why it did not grant the request for mediation was that, in the circumstances of the case, this process would have been too costly and time-consuming. The Tribunal notes, however, that paragraph 14 of Administrative Memorandum No. 941, entitled "Procedures for dealing with staff members' complaints and grievances", lays down

that "[m]ediation is available to *all* staff members faced with a problem of *any* type in the workplace […]. There are no limitations on which staff members can use mediation; nor are there limitations on the types of problems or settings in which mediation is appropriate." Contrary to the Organization's submissions, these provisions, which are not accompanied by any restriction of their scope, gave the complainant the right to benefit from mediation, and the Administration could not object on grounds of expediency such as those put forward in this case. By refusing to initiate this process, the WTO therefore breached the principle of *tu patere legem quam ipse fecisti*, which prohibits an organisation from ignoring the rules it has itself established and it violated the rights and safeguards enjoyed by all staff members.

43. While the Tribunal considers that this behaviour cannot be described as harassment of the complainant, it nevertheless constitutes wrongful conduct which had the effect of depriving her of a possibility of calming the conflict between her and her first-level supervisor. This wrongful conduct warrants an award of damages in addition to those already awarded to the complainant under Judgment 3010 in respect of the refusal to allow her to benefit from this mediation, insofar as it would have addressed the issue of the renewal of her contract.

44. The complainant also complains of the delay in commencing the investigation into the merits of her allegation of harassment.

45. Paragraph 19 of Annex A to the WTO Staff Regulations, entitled "Standards of Conduct", stipulates that "[i]n all cases allegations of harassment […] will be fully, fairly and promptly investigated and dealt with in a confidential manner". The requirements established by this provision are consonant with those resulting from the Tribunal's case law, which establishes in particular that any claim of harassment must be investigated "promptly and thoroughly" (see Judgments 2642, under 8, or 3071, under 36).

46. The Tribunal finds that in this case almost a year passed between the lodging of the complaint of harassment on 27 February 2009 and the date on which the investigator was notified of his terms of reference, i.e. 18 February 2010. Initially, the Administration of the WTO confined itself to ascertaining whether there was any substance to the allegations by conducting a "preliminary investigation". Not only was the very principle of this manner of proceeding extremely questionable, since the Staff Regulations and Rules make no provision for any such preliminary investigation, but this investigation was unreasonably lengthy. The Organization is correct in saying that during 2009 talks took place with the complainant's counsel in an attempt to reach an amicable settlement of all the disputes between the parties, and that this led it to interrupt the process of appointing an investigator. However, the information supplied by the Organization shows that this explanation holds good only for the period between 8 June and 6 November, when the complainant clearly expressed her wish to have the investigator appointed quickly. By delaying the start of the investigation for almost seven months, not counting this interruption, the WTO failed in its duty promptly to conduct an investigation, which justifies an award of damages to the complainant under this head.

47. It may be concluded from the foregoing that the decision of the Director-General of 2 December 2010 must be set aside.

48. The complainant has suffered serious moral injury due to the harassment of which she was a victim, the delay in opening an investigation into this matter and the refusal to grant her request for mediation in 2008. As stated earlier, this injury warrants an award of damages. In light of all the circumstances of the case, the Tribunal considers that this injury may fairly be compensated by awarding the complainant 50,000 Swiss francs.

49. As the complainant succeeds for the most part, she is entitled to costs, which the Tribunal sets at 6,000 francs.

DECISION

For the above reasons,

1. The decision of the Director-General of the WTO of 2 December 2010 is set aside.
2. The WTO shall pay the complainant moral damages in the amount of 50,000 Swiss francs.
3. The Organization shall also pay her 6,000 francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2012, Mr Seydou Ba, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba
Giuseppe Barbagallo
Patrick Frydman
Catherine Comtet