

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**K.**  
**v.**  
**UNESCO**

**124th Session**

**Judgment No. 3836**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs G. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 3 September 2014 and corrected on 23 October 2014, UNESCO's reply of 9 March 2015, the complainant's rejoinder of 29 May, UNESCO's surrejoinder of 26 August 2015, the complainant's additional submissions of 17 November 2016 and supplemented on 2 March and UNESCO's final comments of 11 April 2016;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant contests the decision to reject her internal complaint of harassment.

The complainant joined UNESCO in July 2010 as Assistant Director-General, Natural Sciences Sector (ADG/SC). She was initially appointed for two years but her appointment was subsequently extended several times up to 28 February 2014.

Two days before separating from service, on 26 February, she wrote a letter to the Director-General requesting her to consider an extension of her appointment. Having not received a reply, she wrote

again to the Director-General on 27 March indicating that she may file an appeal against the decision not to extend her appointment as she considered the decision to be unlawful. She believed that the way she had been treated at UNESCO constituted moral harassment. She alleged unethical and illegal behaviour as she was not reappointed on the basis of her national origin. She also contended that there had been a consistent pattern, particularly in the past two years, in which she had been undermined by bullying and manipulative behaviour by senior staff members, which had caused significant damage to her “personal professional reputation”. She added that she had never received an appraisal report. She asked the Director-General to reconsider the proposals she had made with respect to possibilities of extending her appointment, or in the alternative to treat her letter as a formal complaint of moral harassment and refer the matter to the Ethics Adviser to open an investigation pursuant to Administrative Circular AC/HR/4 concerning the changes to the Anti-Harassment Policy (hereinafter “the Anti-Harassment Policy”).

At the request of the Director-General, the Director of the Bureau of Human Resources Management (HRM) replied to the complainant on 10 April 2014 that the decision not to extend her appointment was made for programmatic and financial reasons. Concerning the alleged moral harassment, the Director noted that it was the first time that the complainant raised an issue of that nature. The Director invited the complainant to follow the applicable procedure laid down in the Anti-Harassment Policy, which is set out in item 18.2 of the Human Resources Manual. In particular, she would have to identify the person or persons against whom it was filed and the circumstances under which the alleged harassment had occurred and any other relevant information. On 2 June, the complainant submitted a more lengthy harassment complaint to the Director-General detailing the actions she alleged amounted to harassment.

By a letter of 5 June 2014 the ad interim Ethics Adviser notified the complainant that her harassment complaint had been rejected on the ground that the Anti-Harassment Policy applied only to current staff members, and that at the time of filing her internal complaint of

harassment she was no longer a staff member. That is the decision she impugns before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision and to review itself the harassment claim instead of referring the matter back to UNESCO. She claims material damages in an amount equivalent to two years' salary plus post adjustment, and moral damages in an equal amount. In addition, she seeks an award of costs.

UNESCO asks the Tribunal to reject the complaint as irreceivable on the ground that she has raised the allegations of harassment for the first time after separating from service. It also asks the Tribunal to reject the complaint as devoid of merit.

#### CONSIDERATIONS

1. The complainant states that she “challenges the decision communicated by letter of 5 June 2014 [...] from UNESCO’s Ethics Officer that [her] harassment complaint lodged on 27 March 2014 [...] and as more fully detailed in her letter of 2 June 2014 [...] had been rejected as ‘inadmissible’ since [she] was no longer a [UNESCO] staff member”. The complainant further states that she “considers that the decision to reject her harassment complaint suffers from errors of fact and law inasmuch as UNESCO’s rules governing harassment do not preclude the lodging of harassment complaints by former staff members, and principles of good faith require UNESCO to deal with grievances of former staff members”. She “requests the Tribunal to set aside the impugned decision, and rather than returning the matter to UNESCO to conduct an investigation, find instead after a review of the evidence that [she] was subjected to harassment, and to award material and moral damages and costs”.

2. As to the nature of the harassment, the complainant states that she “applied for and accepted the position of ADG/SC with the logical understanding that the responsibilities, and concomitant authority, she would enjoy would be faithful to the job description as advertised”, but that “after joining UNESCO [she] was subjected to a pattern of behaviour

in which her responsibilities and authority for science in [UNESCO] were systematically eroded, with many of her core responsibilities being passed to others, primarily to the Assistant Director General – Bureau of Strategic Planning (ADG-BSP), a process which took place with implicit and/or explicit endorsement by the UNESCO Director-General”.

3. The applicable Anti-Harassment Policy is set out in UNESCO’s Human Resources Manual, item 18.2 as updated on 20 April 2011. Paragraph 3 of this item states that the policy “covers harassment occurring in the workplace or in other settings in which employees may find themselves in connection with their employment with UNESCO”. Paragraph 4 of item 18.2, which provides the scope of application of the policy, states:

“The policy applies to all persons employed by UNESCO, designated as employees for the purpose of this Item, namely: staff members, ‘contractors’, interns, volunteers and occasional workers. The term ‘contractor’ covers any person who is employed by the organization under a service contract, a special service agreement, a supernumerary contract, or a consultancy contract.”

The focus of the policy is stated in item 18.2, paragraph 5(c), which states as follows:

“Focus shall be placed on preventive action against harassment. Priority shall also be given to the early detection of harassment and to swift action to stop it. Prevention of harassment is a shared individual/organizational responsibility. Each UNESCO employee, at any level, and in particular at supervisory level, is responsible for building a positive work environment and a climate of trust and tolerance, free of all forms of harassment. Prevention and resolution of harassment is also the responsibility of the Organization, which shall ensure that appropriate mechanisms are in place.”

Allegations of harassment are to be treated seriously and to facilitate this, employees are to report such incidents early. Item 18.2, paragraph 5(d), accordingly states as follows:

“All allegations of harassment are treated seriously. To this effect, management is committed to resolving all instances of harassment as soon as it becomes aware of them, even if there are no formal complaints. Employees should, therefore, report any and all incidents of harassment in the workplace, especially before it becomes severe or pervasive.”

Under the policy, the emphasis is on the prevention of harassment. Accordingly, item 18.2, paragraphs 18 and 19, relevantly state as follows:

- “18. Preventive actions should be taken as a priority to deter or stop harassment and to ensure that it does not develop further.
- 19. Managers and supervisors have a specific responsibility within their own team, and shall be accountable for taking early action on potential or actual harassment. Once they are aware of such situations, managers and supervisors must not tolerate their continuation. [...]”

4. As concerns the harassment complaints procedure, item 18.2, paragraph 21, provides that when faced with harassment, an employee may opt for different courses of actions, “[h]e/she may attempt, in a first instance, to resolve the situation informally, or he/she may decide to lodge a formal complaint directly”. Item 18.2, paragraph 22, permits an employee to initiate an informal approach to put a halt to unwelcome behaviour as soon as possible, by raising the matter with the offender, orally or in writing. If that approach fails, the employee is permitted, under item 18.2, paragraphs 23 to 26, to seek early resolution through mediation by a third party. Under this approach, the employee may designate a staff member to mediate or complain to the Director of HRM or the Ethics Adviser. The complainant seems to suggest that she acted to engage the informal process by stating that her “leadership capacity in [various] functions was significantly undermined over time during her tenure at UNESCO. [She] brought this matter to the personal attention of the [Director-General] of UNESCO on multiple occasions, with a particular focus on the abusive behaviour of the ADG-BSP, but no action was taken to ameliorate her professional situation”. She submits, in particular, that she engaged the informal process when she met with the Director-General on 25 October 2013 and 28 February 2014 while she was still a staff member. If she did, the Ethics Adviser would likely have ruled that her harassment complaint was admissible as her complaint would have been made when she was still a staff member. However, the Tribunal sees no evidence to support what are, in effect, mere suggestions, to substantiate the complainant’s submission that she raised the harassment issue with the Director-General at those meetings, or at all, during her tenure with UNESCO.

- 5. In the impugned decision, the Ethics Adviser stated as follows:

“This is with reference to your formal [detailed] harassment complaint sent to the Director-General and dated 2 June 2014.

I regret to inform you that your complaint has been rejected.

Indeed, the Anti-Harassment Policy applies only to current staff members of UNESCO. Paragraph 4 stipulates that ‘the policy applies to all persons employed by UNESCO, designated as employees for the purpose of this item, namely: staff members, ‘contractors’, interns, volunteers and occasional workers’.

As your appointment with [UNESCO] expired on 28 February 2014, you were no longer an employee at the time of the complaint, making your complaint inadmissible.

In addition, please note that the Anti-Harassment Policy’s focus is to prevent harassment. In this regard, allegations of moral harassment should be dealt with while they are happening and not once one has left the Organization. It is thus regrettable that this matter was not brought to the attention of the Ethics Office at the time when the alleged harassment was occurring.”

6. The Tribunal determines that the decision, which was contained in paragraph 4 of the letter reproduced in the preceding consideration is immune from challenge. Since the complainant’s employment ended on 28 February 2014, she was no longer a staff member of UNESCO on 27 March 2014 when she made her harassment complaint. Accordingly, by virtue of paragraph 4 of item 18.2, her harassment complaint fell outside of the scope of Anti-Harassment Policy and was inadmissible as the Ethics Adviser stated. It follows that her complaint against the impugned decision is irreceivable in the Tribunal as she had failed to exhaust internal remedies as required under Article VII, paragraph 1, of the Tribunal’s Statute, and will be dismissed.

## DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 8 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ