

G.
v.
WHO

133rd Session

Judgment No. 4449

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. G. against the World Health Organization (WHO) on 11 October 2019, corrected on 15 November 2019, and WHO's reply of 9 March 2020, no rejoinder having been submitted by the complainant;

Considering WHO's letter of 17 September 2021 providing the President of the Tribunal with new documents and the complainant's comments thereon of 30 September 2021;

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 seeks additional compensation for the delay in dealing with her harassment complaint.

On 30 September 2015, shortly before her separation from service following resignation, the complainant filed a harassment complaint under the Policy on the Prevention of Harassment at WHO against two senior officials. In March 2016, the Internal Oversight Services (IOS) appointed a consultant to investigate. The latter carried out interviews and provided the complainant with the transcripts for comments. On 20 January 2017, the complainant provided comments and produced supporting documents. On 13 March, she was advised that the investigation was likely to be completed in the second quarter of 2017.

Between February 2017 and April 2018, the complainant inquired about the status of the process and complained of delay. She was told that the matter was still under consideration by the senior management, at first, and then by the Global Advisory Committee on future actions in harassment complaints (GAC). On 27 April 2018, she was specifically informed that strict confidentiality prohibited any communications concerning the work of the GAC to her and that she would be contacted regarding the selection of panel members.

The complainant lodged an appeal with the Global Board of Appeal (GBA) on 3 October 2018 against the “implied decision not to complete the procedure governing the review of [her] harassment complaint [...] and/or not to notify [her] of the outcome of that procedure in the event it ha[d] already been completed”. She requested the setting aside of the said decision, the re-activation of the GAC procedure in the event it was stopped and/or the notification of the outcome of her harassment complaint, an award of moral damages in the amount of 50,000 euros and legal fees.

On 9 May 2019, the GBA issued its report (in case No. 73), in which it found that the appeal was receivable on the grounds that there was extraordinary and unreasonable delay in dealing with the harassment complaint, that the complainant had taken all possible steps that could be expected from her to secure a final decision and that there was no certainty as to when a final decision would be taken. It concluded that the Organization had breached its duties of care and good governance and recommended awarding the complainant 3,000 euros in moral damages for the delay and 1,000 euros in legal costs. By a letter of 17 July 2019, which constitutes the impugned decision, the complainant was informed of the Director-General’s decision to endorse the GBA’s recommendations.

The complainant asks the Tribunal to set aside the impugned decision and to order WHO to pay her moral damages in the amount of 47,000 euros, together with 10,000 euros costs.

WHO asks the Tribunal to dismiss the complaint in its entirety. It further submits that, if reimbursement for costs is granted, a maximum amount should be established, and payment should be conditional upon receipt of invoices and proof of payment and upon the complainant not being eligible for reimbursement via other sources.

In a letter dated 17 September 2021 to the President of the Tribunal, WHO provided two new documents: one is a copy of the GBA's report dated 21 July 2021 concerning case No. 142 and the other is a copy of the final decision of the Director-General dated 27 August 2021 to accept the GBA's recommendations and to reject the complainant's harassment complaint. In its report, the GBA found that the IOS appropriately found that the complainant had not been subject to harassment and that there were no errors in the Director-General's decision to accept that conclusion. However, the GBA recommended to allow the appeal in part and award the complainant 5,000 euros in moral damages for further delay and WHO's failure to meet the duty of care, and up to 1,000 euros in legal fees subject to the provision of invoices and proof of payment. WHO submits that these two documents were provided to the Tribunal with relevant information, without prejudice to the complainant's right to appeal the decision in GBA case No. 142.

In a letter dated 30 September 2021 to the Registrar of the Tribunal, the complainant commented that the documents submitted by WHO relating to GBA case No. 142 have no bearing or material consequences for the current case, which is directed against the Director-General's decision dated 17 July 2019. The complainant requests that consideration be given to awarding additional legal fees for having to answer WHO's supplemental submission.

CONSIDERATIONS

1. The complainant seeks an order to set aside the impugned decision of 17 July 2019. The Director-General therein notified her that, while awaiting the report from the GAC on the complainant's harassment complaint, he accepted the GBA's recommendations on case No. 73 that the complainant be awarded moral damages in the amount of 3,000 euros for the delay and be reimbursed for actual legal costs up to a maximum of 1,000 euros. The complainant challenges the decision on the grounds that the Administration nullified her right to a remedy and denied her due process and equal treatment. She adds that the delay amounted to further harassment and that the Administration's advice about the review progress amounted to intentional misrepresentation. Based on the foregoing, she alleges that the GBA erred by not recommending an adequate award of moral damages, and

that the Director-General carried this error forward in the impugned decision. She requests additional moral damages and legal costs.

2. The Tribunal notes that WHO submitted two new documents concerning the final decision that the Director-General had disposed of the complainant's harassment complaint as unsubstantiated; however, this is not part of the impugned decision. The only issue in the present case is whether the complainant is entitled to additional moral damages for WHO's delay and failure to follow the proper procedures in dealing with her allegations of harassment and to costs. The substance of the harassment complaint itself, which is the subject of other proceedings, is not within the scope of this case.

3. Whether the complainant is entitled to moral damages for delay in the processing of her harassment complaint and to costs is not at issue. The Organization has acknowledged that she is entitled. The question is whether the complainant was sufficiently compensated. She argues that given the egregious delay, which appears to be a nullification of her right to a remedy, she should be awarded 47,000 euros in moral damages and 10,000 euros in costs.

4. The Tribunal notes that the complainant advances several new pleas that were not raised in the internal proceedings. According to the Tribunal's case law, "a complainant is not precluded from advancing new pleas [...] before the Tribunal even if these pleas were not placed before the internal appeal body" (see, for example, Judgment 4009, consideration 10).

5. First, the complainant alleges that the delay went beyond mere administrative negligence. In her view, the Administration nullified her right to a remedy for harassment. WHO in its reply submits that the harassment procedure was still ongoing and a final decision would be taken as soon as possible in accordance with the applicable framework of rules. Given that the final decision was made by the Director-General on 27 August 2021, that the complainant retains her right to challenge the decision before the Tribunal, and that the substance of the complainant's harassment complaint is the subject of other proceedings, it cannot be said that her right to a remedy for harassment was nullified.

6. Second, by quoting Judgment 3314, consideration 25, concerning WHO, the complainant alleges that the delay to process the harassment complaint amounted itself to continued harassment. Judgment 3314, consideration 25, reads as follows: “In summary, the Organization breached Staff Rule 1230.3.3, the complainant’s contract and its duty to provide her with a congenial working environment. In effect, the Organization denied the complainant the due process to which she was entitled in the investigation of her harassment complaint. The result was a delay which exposed the complainant to continued harassment.” In that case, it was the organization’s failure in its duty to provide a congenial harassment-free workplace that had caused the complainant a further harassment. In the present case, the complainant separated from WHO shortly after filing her harassment complaint. Her situation is therefore not comparable to that of the complainant in the case leading to Judgment 3314. Also, there is no evidence to prove that actions of the Administration in the internal procedures constituted harassment.

7. Third, the complainant alleges that she was misleadingly advised that the matter was under consideration by the GAC. However, the Administration’s replies to the complainant’s inquiring on the status of her harassment complaint were in a rather vague and estimated tone, such as “the matter is progressing”, “under consideration by the GAC on future actions in harassment complaints”, “the process is moving forward”, etc., and were not expressed with any certainty, therefore they cannot be considered as intentional misrepresentation. The complainant also contends that she has been subject to unequal treatment, but has adduced no evidence to prove this allegation.

In summary, these pleas are unfounded.

8. Concerning the amount of moral damages, the complainant listed as references five harassment-related cases in which moral damages from 10,000 euros to 25,000 euros were awarded. The Tribunal set, in those five cases, the amount of moral damages based on the different circumstances of each case where it found procedural flaws, including delay.

9. The Tribunal considers that the investigation and the internal appeal proceedings were excessively lengthy, running for nearly four years, during which the Organization did not act with due diligence and in a timely manner; inter alia, the GAC did not hold the first meeting until one year and eight months after it received the investigation report, as indicated in the GBA's report. While Information Note 24/2012 of 6 July 2021 provides in section 4.15 that "[t]he [GAC] Panel will normally complete its review and provide its reasoned views to the Director-General/General Director within [sixty] days of the first meeting of the Panel", it does not mean that the Organization can prolong the review period by postponing the date of the first meeting. Even in the GBA's review proceeding, the Organization continued to extend the timeframe, showing no particular concern about the time being taken to deal with the matter. Considering that the nature of harassment claims requires that they be resolved rapidly and effectively, that the Organization's undue delay without offering reasons caused psychological vexation on the part of the complainant, which she has articulated, and that GBA case No. 142 has dealt with the ongoing delay after the point in time of GBA case No. 73, the Tribunal assesses the appropriate amount of moral damages as 8,000 euros (inclusive with the 3,000 euros awarded by the Director-General in the impugned decision).

10. Inasmuch as the complainant has succeeded in these proceedings, she will be awarded 5,000 euros in costs.

DECISION

For the above reasons,

1. WHO shall pay the complainant an additional 5,000 euros by way of moral damages.
2. WHO shall pay the complainant 5,000 euros for legal costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 26 October 2021, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ