Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P. (No. 3)

v.

ILO

135th Session **Judgment No. 4625**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms V. P. against the International Labour Organization (ILO) on 18 October 2018, corrected on 19 November and 5 December 2018, the ILO's reply of 10 January 2019, the complainant's rejoinder of 14 March 2019 and the ILO's surrejoinder of 5 April 2019;

Considering Articles II, paragraph 1, 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 disputes the lawfulness and outcome of a competition procedure in which she participated.

On 26 April 2010 the complainant joined the International Labour Office (hereinafter "the Office") – the ILO's secretariat – as a procurement officer in the Procurement and Contracting Bureau (hereinafter "the Procurement Bureau"). At that point she held a short-term contract at grade P2. In January 2013, when she was serving under a fixed-term technical cooperation contract financed by extra-budgetary funding, she was promoted to grade P3. Her fixed-term technical cooperation contract was extended periodically until 31 August 2017, though the last extensions were for only six months then two months.

On 8 September 2015 the ILO published a vacancy announcement for the position of procurement officer at grade P3, funded from the Organization's regular budget. The competition was open to both internal and external candidates. The complainant submitted her application within the prescribed time limit, and the application period closed on 11 October 2015. As part of the selection procedure, the complainant sat a competency assessment on 22 February 2016 then attended an interview with a technical panel on 4 April.

On 29 April 2016 the complainant was informed by the Human Resources Development Department (HRD) that her application had been unsuccessful. At the complainant's request, HRD sent her more extensive feedback explaining why she had not been chosen in an email of 31 May 2016. She was told that an external candidate had received a better score in the technical evaluation process, in particular owing to his greater previous experience and more detailed answers to technical questions.

On 26 May 2016 the complainant lodged a grievance seeking the cancellation of the competition. Following notification in a letter of 26 August 2016 that her grievance had been rejected, she submitted her case to the Joint Advisory Appeals Board (JAAB) on 28 September 2016.

In its report of 8 June 2018, the JAAB found that the competition in question had been affected by obvious and indeed serious procedural defects. According to it, those defects resulted particularly from the unequal treatment of candidates, errors of judgement in their evaluation, and a conflict of interest and lack of impartiality of a member of the technical panel. It added that the Office had failed in its obligation to attempt to correct the complainant's contractual situation in line with Office Procedure Number 16 concerning management and use of Programme Support Income (PSI), given that she performed tasks covered by the Organization's regular programme and budget despite holding a technical cooperation contract – a type of contract that is not covered by the Organization's regular budget. The JAAB recommended that she be awarded damages in an amount equivalent to the amount ordinarily set by the Tribunal when a selection procedure is tainted by obvious and serious procedural flaws. It also recommended that she be

granted the sum of 2,500 Swiss francs in compensation for the time that the JAAB had taken to deal with her grievance.

In a letter of 24 July 2018 the complainant was notified of the Director-General's decision to award her 5,000 Swiss francs in compensation for any injury arising from the conduct of the competition procedure, as well as 2,500 Swiss francs for the length of the procedure before the JAAB. That is the impugned decision.

The complainant seeks an order that the impugned decision of 24 July 2018 be set aside. She requests the cancellation of the disputed competition, and asks the Tribunal to draw all the consequences that this entails. She requests moral damages of an appropriate amount considering the procedural flaws that have been established, and also claims costs.

The ILO asks the Tribunal to dismiss the complaint as unfounded.

In the meantime the complainant had lodged a grievance contending that the technical cooperation contracts that she had held, and their successive extensions, had been granted to her unlawfully as her duties mainly related to projects funded from the Organization's regular budget. In a letter of 18 July 2018 the complainant was informed of the decision taken by the Deputy Director-General for Management and Reform on the Director-General's behalf to endorse the JAAB's finding that the Office had not observed certain rules concerning technical cooperation contracts. He also endorsed the JAAB's view that the Administration ought to have monitored the complainant's work situation more closely when her doctor brought her occupational disease to its attention, although measures had subsequently been taken in connection with the consideration of her harassment grievance. The complainant was awarded the sum of 20,000 Swiss francs in compensation for injury suffered. However, the complainant's claim for compensation for the injury owing to the failure to reassign her for health reasons was declared unfounded. That decision was impugned by the complainant, who asked the Tribunal to adequately redress the injury suffered. That complaint was dismissed in its entirety in Judgment 4624 delivered in public this day.

The complainant had also filed a harassment grievance directed against her immediate supervisors on 24 November 2016. That grievance was dealt with in a decision that was likewise impugned before the Tribunal and disposed of in Judgment 4313 delivered in public on 24 July 2020. In that judgment, the Tribunal found that the fact that the complainant had not been apprised of all material evidence likely to have a bearing on the outcome of her claims during the internal procedure for considering her grievance constituted a serious breach of the requirements of due process. However, the Tribunal also found that it was not appropriate to remit the case to the Organization and that it did not have information allowing it to determine the existence of harassment with certainty. As the Tribunal considered that the complainant had been deprived of the right to have her harassment grievance properly investigated, it awarded her moral damages in the amount of 25,000 Swiss francs.

CONSIDERATIONS

1. The complainant requests an order setting aside the Director-General's decision, notified in the letter of 24 July 2018, to pay her 5,000 Swiss francs in compensation for all injury arising from the conduct of the competition procedure, as well as 2,500 Swiss francs on account of the undue length of the procedure before the JAAB. She also requests:

– the cancellation of the disputed competition, with all the consequences that this entails;
– an award of moral damages in an appropriate amount on account of the established procedural flaws; and
– an award of costs.

2. Referring to the report delivered by the JAAB, the complainant submits that the procedure that was followed in the disputed competition was tainted by obvious procedural flaws. She therefore challenges the reasoning stated in the impugned decision of 24 July 2018, whereby the Director-General, while acknowledging that the technical evaluation of

her application had lacked rigour, had nevertheless considered that nothing in the file suggested that this could have had a direct effect on the final choice of candidate on the basis of the merits of his application.

3. To begin with, the Tribunal recalls its settled case law under which, in matters of appointment, the choice of the candidate to be appointed lies within the discretion of the authority competent to make the appointment within the organisation concerned. Such a decision is therefore subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence (see, in particular, Judgments 3652, consideration 7, and 3372, consideration 12). As a result, a person who has applied for a post that an organisation has decided to fill by a competition and whose application is ultimately unsuccessful must prove that the selection procedure was tainted by a serious defect (see, in particular, Judgments 4001, consideration 4, and 1827, consideration 6).

4. The complainant first submits, in respect of the first stage of the competition procedure (opening of the vacancy – review of the vacancy announcement – submission of applications), that the file did not contain any explanation as to why it had been decided to use a competition open to external candidates. In this respect, she submits that, in view of her irregular contractual situation owing to the use of technical cooperation contracts renewed several times to continue her appointment, under Office Procedure IGDS Number 16 (Version 1) concerning the management and use of Programme Support Income and article 4.2(a) of the Staff Regulations, the Office ought to have allocated funding to assign her to a position financed from the Organization's regular budget. The complainant therefore argues that, in view of her irregular contractual situation, the fact that she met all the requirements and had already held a similar, if not identical, position also at grade P3 since 2013, and the fact that her supervisors had been completely satisfied with her performance up to that point, the position

to be filled could, or even should, have been directly assigned to her. At the very least, the competition could have been confined to internal candidates if it had been established that there were other internal candidates in a similar situation to hers or internal candidates with more than five years of continuous service.

5. The Tribunal notes that under article 4.2(f) of the Staff Regulations, appointments to posts in the Professional category are normally made by competition in accordance with the procedure set out in Annex I to the Staff Regulations, except in the case of exceptions that are not applicable here. Similarly, the first stage of the competition procedure, governed by Annex I to the Regulations and concerning requests for the opening of vacancies and the review of vacancy announcements, does not provide that priority must be given in particular cases to competitions limited to internal candidates. On the contrary, it may be reasonably considered that, for the reasons given by the Organization in its reply, which are not effectively contradicted by the complainant in her rejoinder, the ILO mainly resorts to competitions that are open to internal and external candidates to fill professional posts, it being understood that special consideration must only be given to internal candidates who have had five years of continuous service.

It follows that the complainant's assertion that if the provisions she refers to in support of her plea had been correctly applied she should have been appointed without a competition is unfounded.

Furthermore, the Tribunal considers that, except in special circumstances, an organisation is not required to state the reasons why it chooses to fill a post using a particular type of competition.

The complainant's first plea is unfounded.

6. Concerning the second stage of the procedure (identification of opportunities for filling the vacancy by a transfer in the same grade or through mobility), the complainant contends that the impugned decision does not contain sufficient reasons in terms of the opportunities that existed in the present case to fill the position at issue using these methods.

7. In respect of the second stage of the procedure, paragraphs 8 to 11 of Annex I to the Staff Regulations provide as follows:

> "8. The Human Resources Development Department will prepare a list of internal candidates who have applied for a vacancy in the same grade and identify those who meet the minimum requirements.
>
> 9. The responsible chief shall review the list prepared by the Human Resources Development Department and prepare an evaluation regarding the suitability of candidates.
>
> 10. The Recruitment, Assignment and Mobility Committee [RAMC] shall review the list of suitable internal candidates together with the evaluations of the Human Resources Development Department and the responsible chief and shall prepare a report for the Director-General including advice and recommendations for filling vacancies taking into consideration the applications of officials subject to geographical mobility first, having regard to the hardship and duration of a field assignment.
>
> 11. Candidates will be informed of the Director-General's decision to fill a vacancy by transfer in the same grade or through geographical mobility."

Furthermore, paragraph 32 of the same annex states as follows:

> "32. Officials serving on technical cooperation projects, except those detached from another job within the Office, as well as officials appointed under the Rules Governing Conditions of Service of Short-term Officials, will not normally be eligible to participate as internal candidates. The Recruitment, Assignment and Mobility Committee may agree to extend eligibility to these officials, but may establish special requirements."

8. In the light of the preceding provisions, it is clear, first, that the complainant, who was not an internal candidate for their purposes, cannot argue that there was any breach in her respect of the rules applicable to the second stage of the procedure followed in the competition concerned.

In this respect, the impugned decision states the following reasoning:

> "[T]he Director-General notes that, although it criticises particular aspects, the JAAB did not identify any breaches of Annex I of the Staff Regulations in respect of the [...] second [stage] of the competition, which is further borne out by the documents in the file."

It was not necessary for the impugned decision to provide more detailed reasons. It is well established by the case law that how extensive the reasons need to be will depend on the circumstances of each case (see, in particular, Judgments 4164, consideration 11, 4081, consideration 5, 4037, consideration 7, and 1817, consideration 6). Here, the aforementioned reasoning was adequate.

It follows that the complainant's second plea is also unfounded.

9. In respect of the third stage of the procedure followed (evaluation of other applications), which itself comprises three sub-stages, namely screening (shortlisting) of candidates, competency assessment of the shortlisted candidates and, lastly, their technical evaluation, the complainant criticises the Director-General for, first, having merely stated as part of the reasoning for the impugned decision that there had been no breach of Annex I to the Staff Regulations "in respect of the aspects relating to the competency assessment of shortlisted candidates and the consideration of the technical panel's report by the Recruitment, Assignment and Mobility Committee", without explaining why that was the case.

This is all the more regrettable in the complainant's view as she submits that the Recruitment, Assignment and Mobility Committee (RAMC) did not play a "very clear role" in the matter and, although the Office had fully cooperated with the JAAB, the complainant "can only be concerned and dismayed by the lack of transparency in the procedure followed and, to a certain extent, by its repercussions on the consideration of her grievance by the JAAB", to which the JAAB itself had referred. On this point, she contends that the Director-General's decision appears all the more incomprehensible in that it disregarded an individual recommendation made by a member of the RAMC appointed by the Staff Union that the complainant, who had been ranked second by the technical panel and whose contract was due to expire two months later, should be appointed to the position in order to offer that candidate, who was working in the Procurement Bureau at the material time and had been employed by the Office since January 2011, a career opportunity at the ILO funded by the Organization's regular budget. The complainant

similarly argues that it is not apparent from the reasoning for the impugned decision that, as was explicitly provided for in the vacancy announcement, special consideration had been given to the complainant's application in the third stage of the procedure, given that she had at least five years of continuous service with the Office.

10. The reasoning for the impugned decision states as follows:

> "In respect of the lawfulness of the competition procedure strictly speaking, the Director-General notes that, although it criticises particular aspects, the JAAB did not identify any breaches of Annex I to the Staff Regulations in respect of the first and second stages of the competition, which is further borne out by the documents in the file. That is also true of the third stage in respect of the aspects relating to the competency assessment of shortlisted candidates and the consideration of the technical panel's report by the Recruitment, Assignment and Mobility Committee. Furthermore, regarding the selection of candidates for the shortlist, which the Director-General notes included your application, the Director-General does not accept either the JAAB's reservations or the alleged procedural flaw identified by the JAAB in respect of the date of the application form submitted by the successful candidate. In this respect, the technical explanations provided by the Director of the Human Resources Development Department in his letter of 27 March 2018 are completely satisfactory. Neither does the Director-General agree with the JAAB's finding of a procedural flaw connected with a possible conflict of interest faced by the Chief of the [Procurement Bureau]. His participation in the technical panel was required in view of the position to be filled and did not present a conflict of interest for the purposes of paragraph 14 of IGDS Number 68. However, in the light of the JAAB's assessment and the evidence in the file, the Director-General considers that the process of the technical evaluation of your application was somewhat lacking in rigour, but nothing in the file suggests that those errors had a direct effect on the final choice of candidate on the basis of the merits of his application. In these circumstances, the Director-General has decided to award you the sum of 5,000 Swiss francs in compensation for any injury arising from the conduct of the competition procedure, over and above the sum of 2,500 Swiss francs for the length of the procedure before the JAAB."

The Tribunal considers that this reasoning is adequate in that it allows the complainant to understand the reasons why the successful candidate was selected, even if she does not agree with them. This is especially so since this case involves a decision relating to a competition procedure, for which the authority competent to make the appointment

has a broad discretion, and it is moreover possible for the organisation to clarify the reasons for its choice at a later stage in the light of the specific grievances expressed by a candidate who considers her- or himself to have been adversely affected by the decision (see, in particular, Judgments 4467, consideration 7, 4259, consideration 6, 4081, consideration 5, 2978, consideration 4, and 2060, consideration 7(a)).

This third plea is therefore similarly unfounded.

11. The complainant also submits that various "serious and obvious" defects affected the third stage of the competition procedure.

12. First of all, the complainant contends, on the basis of the JAAB report, that the fact that the successful candidate submitted a new CV on 8 January 2016 although the deadline for the submission of applications was 11 October 2015 was a "serious and obvious" defect that rendered the rest of the procedure unlawful.

The Tribunal is persuaded on this point by the explanations provided by the Director of HRD in his letter of 27 March 2018, to which the impugned decision expressly refers and on which the Organization comments in greater detail in its reply. The file shows that at the time when the procedure took place, the previous system for registering applications, which could be used in various selection procedures for which candidates applied whether at the Office or other entities in the United Nations system, allowed candidates to update their application form with only the latest details entered being registered. That is what happened in this case, as the successful candidate, who had also applied for other positions, had in that connection submitted a CV registered at a later date than that on which he submitted his application for the disputed competition.

This first plea is therefore unfounded.

13. The complainant next asserts that there was a breach of the principle *tu patere legem quam ipse fecisti* and the principle that candidates must be treated equally in that the final criteria for evaluating applications were not drawn up until 26 January 2016, almost three

months after applications were received. The authority thereby breached paragraph 13 of Annex I to the Staff Regulations among other provisions.

Paragraphs 13 to 15 of Annex I to the Staff Regulations provide as follows:

> "13. Prior to the screening process the responsible chief and the Human Resources Development Department will determine: the weight that will be accorded to the various elements to be taken into consideration during the evaluation of eligible candidates (personal résumé, written tests, interview, etc.).
>
> 14. The Human Resources Development Department shall provide the responsible chief with a list of candidates who meet the minimum requirements specified in the vacancy announcement.
>
> 15. The responsible chief and Human Resources Development Department shall establish a shortlist of candidates in consultation with the technical panel, including where appropriate through eliminatory tests."

14. In the present case, it is apparent from the evidence that:

– the vacancy announcement did in fact set out the minimum requirements for the position to be filled;
– the long list of candidates was in fact drawn up by HRD and then extended by that department in consultation with the responsible chief;
– the shortlist (consisting of five candidates, including the complainant and the successful candidate) was in fact determined by the responsible chief, in consultation with HRD, on the basis of the criteria set out in the vacancy announcement, but adjusted and weighted by those two authorities for the purpose of selecting a limited number of applications;
– one of the requirements set at that stage was to have received a minimum total weighting of 70 points in the screening process.

In view of the foregoing and in the light of the applicable rules, the Tribunal cannot see what would prevent a candidate who was not listed at the outset from being included on the final shortlist.

This plea is also unfounded.

15. The complainant argues that the Deputy Chief of the Procurement Bureau had a conflict of interest in that he was involved in the process of screening applications at the beginning of the procedure but subsequently excluded himself from the technical panel, describing his working relationship with the complainant as "tense". In the complainant's view, the fact that this deputy chief was able to participate in the initial screening of all applications and rate her profile at that point casts doubt on the objectivity of the procedure.

The Tribunal observes that it is certainly established that the complainant had a difficult relationship with the Deputy Chief of Procurement. However, the file shows that his only involvement in the competition was when the long list of candidates was drawn up and that the complainant was placed on that list having even received the highest weighting among the candidates selected. Thus, the Deputy Chief's involvement in the procedure did not in any event adversely affect the complainant's interests.

Accordingly, this plea must be dismissed.

16. The complainant also submits that three fundamental mistakes were made when assessing her professional and technical competence. First, she alleges that her eight years of professional experience relevant to the post, including five years at the ILO, and her previous professional experience as Procurement Analyst at the Council of Europe Development Bank, were insufficiently taken into consideration but instead "devalued" by the panel. Second, she submits that command of Spanish was considered by the technical panel to be a requirement, and she was even invited by the panel to reply in Spanish to one of the questions she was asked. However, knowledge of Spanish was presented as merely an advantage in the vacancy announcement, and the complainant was treated unfairly in comparison to the successful candidate as he received a higher score than her for his overall knowledge of languages. Third, she argues that the technical panel overstepped its mandate by expressing reservations regarding her lack of humility and capacity for interaction with colleagues and clients, although she gave two specific examples in that regard during her interview and, during her competency

assessment, she had replied to a similar question regarding her client orientation and received a mark of 4 out of 5 on this point.

17. During the third stage of the competition procedure as laid down in Annex I to the Staff Regulations, shortlisted candidates are to undergo a "competency assessment" procedure, followed where appropriate by a "technical evaluation" procedure carried out by a technical panel. On this point, Annex I to the Staff Regulations provides, in particular, as follows:

> "*Competency assessment*
>
> 16. Any external candidate or any internal candidate applying to a higher category shall be assessed against core competencies and values [...]
>
> [...]
>
> 18. Only candidates who are successful in the competency assessment will progress to the next selection stage.
>
> [...]
>
> *Technical evaluation*
>
> 21. A technical panel shall be established to evaluate shortlisted candidates who have been successful in the competency assessment.
>
> 22. The technical panel will comprise the manager responsible for the vacant position or his/her representative, a representative of the Human Resources Development Department and a third independent member selected from a list of serving staff established in agreement with the Staff Union. Technical experts may also be appointed to assist the technical panel in its evaluation of candidates. Technical panel members and technical experts are required to act impartially, and should not have any conflict of interest or perceived conflict of interest related to any candidates for the position.
>
> 23. The technical panel will undertake a rigorous technical evaluation of the candidates in accordance with pre-established criteria through an interview and any other test decided by the responsible chief in consultation with the Human Resources Development Department. The marking of written tests will be blind.
>
> 24. The technical panel shall prepare a report with recommendations, including the ranking from the technical evaluation, and relevant comments, on candidates recommended for appointment. The technical panel may also recommend that the competition be declared unsuccessful or that it be cancelled.
>
> [...]

REVIEW OF PROPOSED APPOINTMENTS AND STAFF MOVEMENTS AND DECISION BY THE DIRECTOR-GENERAL

26. Reports from the technical panels shall be reviewed by the Recruitment, Assignment and Mobility Committee [RAMC], which shall submit the reports, together with its advice and recommendations on other relevant issues for selection, to the Director-General for decision."

18. It is apparent from the submissions that, as the Organization itself admits, the technical panel lacked somewhat in rigour, particularly when conducting interviews with the various candidates, drawing up the report containing recommendations, and ranking candidates based on the technical evaluation. However, the complainant's grievances cannot be described as significant errors warranting the setting aside of the results of the competition for the reasons stated below.

First, the technical panel does not appear to have made a significant error in considering that the successful candidate had a period of relevant professional experience that was longer (since 2000) and more varied (appointment within three organisations and entities in the United Nations system) than the complainant (appointment with the Council of Europe Development Bank, then the Office's Procurement Bureau since 2010).

Second, the Tribunal observes that, while the complainant takes issue with the conditions in which the candidates' level of Spanish was assessed and the consequences thereof in the rest of the procedure, the evidence shows that this was not, in any event, the criterion on the basis of which the successful candidate's application was preferred to hers.

Third, the Tribunal notes that aforementioned paragraph 24 of Annex I to the Staff Regulations makes it explicitly clear that the technical panel is authorised to include in its report "relevant comments, on candidates recommended for appointment" in addition to recommendations and a ranking on the basis of the technical evaluation. The technical panel cannot therefore be faulted for having made several comments in its report that went beyond the stage of a purely technical evaluation of the candidates interviewed.

19. The complainant further contends that she could legitimately fear that the responsible chief of the Procurement Bureau, who sat on the technical panel, was biased and had a conflict of interest.

In respect of the "conflict of interest", the complainant maintains that the responsible chief had stated to her in the past that the successful candidate was "his friend".

In respect of the alleged "bias", the complainant states, first, that the successful candidate was eventually added to the shortlist on the responsible chief's initiative and, second, that the chief lacked impartiality in the technical evaluation process, particularly on account of his attitude towards the complainant during the interview and the unflattering comments that he ensured were inserted in the technical evaluation report.

The Organization argues that these two accusations are unfounded.

20. Office Guideline IGDS Number 68 (Version 1) of 17 June 2019, entitled "Conflicts of interest", which is applicable in the present case, states in paragraph 6 that a conflict of interest arises:

> "when you have a real, potential or perceived direct or indirect competing interest with the role, function or activities of the ILO. This competing interest may result in you, or someone related to you or entities in which you have an interest, being in a position to benefit from the circumstances, or in the Office not being able to achieve a result which would be in its best interests, or both".

As far as who is considered a "close friend", paragraphs 14 and 15 of the guideline state the following:

> "14. Questions of judgement and degree also arise when considering friends and other associates. Simply being acquainted with someone, or having worked with them, or having had official dealings with them, should not usually create any problem. However, a long-standing or close association or very recent dealings may do so.
>
> 15. Close and long-standing relationships (personal as well as professional) are likely to create strong perceptions of interest. You should ensure that your actions can withstand close scrutiny, which includes avoiding both the appearance and the reality of any conflict of interest."

Lastly, concerning the issue of whether a staff member should report a conflict of interest even if he or she considers that one does not exist, paragraphs 18 and 19 of the guideline provide as follows:

> "18. [...] The matter is not determined by your subjective judgement of what is in the best interests of the Office. Avoiding conflicts of interest also involves considering public perception – what would an objective outside observer reasonably perceive? Often, what needs to be avoided is the adverse perception that could arise from the overlapping interests.
>
> 19. Sometimes there may be a perception of a conflict of interest where the interests are close, but do not actually overlap. It may still be necessary to take some steps to manage these situations, because the perception of a conflict of interest can damage your professional reputation, the Office's reputation or constituents' trust in it."

In the light of these provisions, the Tribunal observes, first, that the file that was submitted to it does not support a finding that the successful candidate could in reality be considered a "close friend" of the responsible chief of the Procurement Bureau and, second, that after the responsible chief himself informed the representative of HRD who was a member of the technical panel that he knew the successful candidate, she told him that she did not perceive any conflict of interest. In addition, in his comments submitted to the Tribunal in the Organization's reply, the successful candidate stated that his relationship with the responsible chief of the Procurement Bureau went back to 2005 when they were both members of CPAG (the Common Procurement Activities Group (of Geneva-based International Organizations)), that reciprocal professional esteem existed between them but their relationship was "strictly professional", that they had had only "sporadic" contact over a period of several years and that the assertion that they had a friendship was "incorrect and baseless".

In view of the foregoing, the Tribunal considers that, in the present case, the existence of a conflict of interest requiring the responsible chief of the Procurement Bureau to withdraw from the technical panel cannot be regarded as proven.

21. In respect of the allegation that the responsible chief of the Procurement Bureau displayed a lack of impartiality in the competition procedure, the Tribunal notes first of all that the numerous emails exchanged when the shortlist of five candidates was drawn up show that the list was established with the mutual agreement of HRD and the responsible chief in compliance with the applicable provisions.

Those five candidates then underwent a competency assessment, a sub-stage of the procedure in which the responsible chief was not involved. The Tribunal notes that the following comment was made in respect of the complainant at that stage:

> "Ms P. could enhance her skills finding a way how to balance rigour with empathy in order to enhance her impact in collaboration as well as in building [the] client relationship."

Regarding the manner in which the complainant's interview during the sub-stage of the technical evaluation by the technical panel was conducted, the Tribunal notes that, while the complainant accuses the responsible chief of an unfavourable attitude and statements in her regard during the meeting of the technical panel, the chief himself strenuously denies that he engaged in such behaviour. As it is, the complainant's accusations are not borne out by the statements provided by the two other members of the technical panel, who were subsequently asked about this point. Moreover, in the same statements those two members emphasised that the successful candidate was chosen unanimously as the panel members agreed that he was better suited overall to the position than the complainant.

In view of all these circumstances, the Tribunal considers that the complainant's pleas alleging that the Chief of the Procurement Bureau had a conflict of interest and lacked impartiality cannot be upheld.

22. In what appears to be a last plea challenging the lawfulness of the procedure followed by the technical panel, the complainant asserts that the panel was not assisted by two technical experts and that a written test was not held, which, in her view, made the conduct of the interview highly subjective.

However, the Tribunal observes that the technical panel was properly constituted pursuant to aforementioned paragraph 22 of Annex I to the Staff Regulations. Moreover, under the same provision, the additional presence of one or more technical experts is merely optional. Lastly, although aforementioned paragraph 23 requires an interview to be held with the shortlisted candidates, it does not necessarily require a written test to be completed, which may only be arranged if the responsible chief of the unit concerned and HRD consider it useful.

This last plea is therefore similarly unfounded.

23. In view of all the foregoing considerations, the Tribunal considers that it is unnecessary to set aside the impugned decision or, in consequence, cancel the disputed competition.

24. In respect of the moral injury she alleges she has suffered, the complainant submits that the sum of 5,000 Swiss francs that she was awarded in compensation is inadequate given the gravity of the serious defects that affected the procedure.

It is to be inferred from what has been stated above that the Tribunal has not identified any significant defects in the conduct of the competition procedure. In these circumstances, the complainant has not shown, in any event, that she is entitled to an award higher than the amount of 5,000 Swiss francs already granted to her in the impugned decision.

25. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to order the production of documents sought by the complainant, which do not have any bearing on the outcome of the case.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ