

**114th Session**

**Judgment No. 3188**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 16 July 2010 and corrected on 2 November 2010, the Agency's reply of 10 February 2011, the complainant's rejoinder of 29 April and the IAEA's surrejoinder of 2 August 2011;

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

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

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

A. The complainant is an Austrian national born in 1957. She joined the IAEA in 1984 as a Clerk/Typist at level G-4 within the Division of Operations C in the Department of Safeguards (SGOC). In 1992 she was assigned to the Division of Concepts and Planning (SGCP), within the same Department, as a Secretary at grade G-4. In mid-2001 she was assigned to the position of Senior Office Clerk at grade G-5 again in the same Department. In March 2003 she was assigned to the Office of the Director of SGCP as a Senior Office Clerk, and in March 2004 she made a formal request for an updated job description, since

hers was no longer accurate. In mid-2004 she was asked to assume the duties and responsibilities of the Director's senior secretary. Although she discussed her request for an upgraded job description with her supervisor several times in 2004, no updated job description was issued. Throughout the 2003-2006 period the complainant received very positive appraisal reports.

In July 2007 she applied and was interviewed for the G-6 post of Administrative Assistant in the Section for Safeguards Programme and Resources (SG-CPR) in the Department of Safeguards, which had been advertised early that month; three such posts were in fact vacant. On 1 February 2008 she wrote a memorandum to the Director of SGCP requesting again that her job description of November 2000 be updated to reflect the duties she had undertaken since 1 March 2003. Having heard that she had not been selected for the G-6 post, she also requested, in that memorandum, "an immediate transfer, at a higher level, if possible, otherwise a lateral one, anywhere within the Department of Safeguards but outside of SGCP"; hence putting in writing the discussion she had had with her supervisor a few days earlier. On 12 February she was informed that she had not been selected for one of the Administrative Assistant posts. On 21 February she wrote to the Director General asking him to review the decision not to select her, explaining that the outcome of the selection process might have been affected by the fact that her job description was out of date when she applied for the vacant posts. She emphasised that she had already performed duties similar to those required for the advertised posts.

By an e-mail of 31 March 2008 the Director of the Division of Operations B (SGOB) in the Department of Safeguards informed the complainant that, effective 1 April 2008, she would be transferred to the Office of the Head of Section OB2 (SGOB2) in the aforementioned division. On 9 April the complainant wrote an e-mail to the Deputy Director General in charge of the Department of Safeguards (DDG-SG) asking him to transfer her to another position, because she considered that her transfer to SGOB2 amounted to retaliation as she was being transferred from a G-5 post to a

G-4 post. He replied by an e-mail a few minutes later “let us now work from where we are just now”. That same day the complainant wrote a memorandum to the Director of the Division of Human Resources (MTHR) indicating that she did not understand the reasons for transferring her to a G-4 post, given that she had held grade G-5 for seven years. She asked him to “correct” the transfer in order for her to remain in a G-5 post or to assure her that her career prospects would not be jeopardised by her being assigned to a G-4 post. She also asked him to confirm that she would maintain her G-5 salary. On 14 April the Director replied that she had in fact been temporarily reassigned to perform the function of Implementation Assistant at the G-5 level, and not at the G-4 level, and that a job description outlining her functions was being finalised by her supervisor and would indicate that her duties were at the G-5 level.

Having received no reply to her request for review of 21 February 2008 concerning the selection decision, the complainant filed an appeal with the Joint Appeals Board (JAB) by a memorandum dated 29 April 2008. That same day she also wrote to the Director General, requesting again that her job description be reviewed, and asking him to review the selection process for the posts of Administrative Assistant, alleging that the selection process was flawed.

On 5 May she filed a second appeal with the JAB challenging the Administration’s failure to provide her with an updated job description.

On 30 May the complainant wrote to the Director General requesting that he review the decision to transfer her to SGOB2. She again asked to be transferred elsewhere and to be given an updated job description. The Director General rejected her request for review on 1 July, stating that she had been transferred at the G-5 level and not at the G-4 level. He added that MTHR had received a finalised job description from SGOB on 26 June 2008, which showed that her duties were at the G-5 level.

The complainant was transferred on 1 July to a G-5 post in SGOB3. On 2 July 2008 she filed a third appeal with the JAB, contesting the earlier decision to transfer her to SGOB2, as well as the

decision of 12 February 2008 informing her that she had not been selected for the position of Administrative Assistant.

On 29 August 2008 the Acting Director General replied to the complainant's memorandums of 21 February and 29 April 2008, explaining that the fact that she had already performed duties that were similar to those required for the advertised posts of Administrative Assistant did not mean that the selection process was flawed. He added that although she met some of the qualifications required for the posts the recruitment panel considered that she did not fulfil all the requirements set out in the vacancy notice. He emphasised that the evaluation of all candidates had been approved by the Division Director, reviewed by the Joint Advisory Panel on General Service Staff and endorsed by the Director of MTHR. He concluded that her application had been considered thoroughly, in good faith and in keeping with the rules of fair and open competition and that her job description had not affected the outcome of the selection process. He therefore maintained the decision not to select her for the advertised posts. In June 2009 the complainant was reassigned to the Department of Technical Cooperation within the Division for Africa.

In its report of 24 December 2009 the JAB indicated that it had examined the three appeals filed by the complainant and recommended that the Director General confirm the challenged decisions. It nevertheless indicated that consideration should be given to making reasonable efforts to find a suitable position for the complainant in the Department of Safeguards. In its view, the fact that the complainant's job description was not updated when she submitted her application had no impact on the decision not to select her, as her experience was reflected in her performance review reports, which were considered by the recruitment panel. It also held that the job description issued, albeit belatedly, in November 2008, satisfactorily addressed the issues she had raised in that respect. It considered that the decision to transfer her in June 2009 to the Department of Technical Cooperation addressed her request of April 2008 to be

transferred out of SGOB2 as well as her request of July 2008 to be transferred out of SGOB3.

On 31 March 2010 the Director General informed the complainant that he had decided to endorse the JAB's findings and recommendations. He added that there were no "programmatic reasons" for transferring her now to the Department of Safeguards. That is the impugned decision.

By a memorandum of 10 August 2010 the complainant again wrote to the Director General requesting that she be provided with all relevant documents relating to the recruitment for the G-6 posts. Her request was denied on 28 September 2010.

B. The complainant submits that at the time of her application for the advertised post of Administrative Assistant the recruitment panel did not have a proper understanding of her then current duties because her job description had not yet been updated; consequently, the panel could not make a fair evaluation of her qualifications. In her view, the selection process cannot be considered fair and objective if one of the candidates is evaluated based on duties and responsibilities she no longer performs.

She criticises the Agency for the time taken to issue her with an updated job description, indicating that it was in March 2004 that she asked that her job description for the post she held in 2003 be updated, yet she received the revised job description only in December 2008. She stresses that, according to Staff Rule 2.01.2(C), for each post the classification must be based on an official job description derived from the programme, setting out the functional title, organisational setting, duties and responsibilities attached to the post and qualification requirements for the post. She contends that due to the egregious delays in providing her with an updated job description, she lost an opportunity for promotion during that period.

The complainant argues that the decision to transfer her to SGOB2 with effect from 1 April 2008 was taken *ultra vires* as there is no evidence that it was taken or authorised by the Director General,

who under Staff Regulation 1.02 has the sole authority to do so. Indeed, the memorandum of 27 March 2008 authorising her transfer was signed by the DDG-SG. She also contends that she was transferred without prior notice or consultation, given that she was informed by an e-mail of 31 March 2008 of her transfer as of 1 April. Moreover, she was given no job description and, contrary to the performance management system's framework, no work plan was established. The transfer was therefore "extremely humiliating and without regard to her dignity and good name".

She alleges that the IAEA acted in breach of its duty of care, good faith and mutual trust when dealing with her case and that she is entitled to material and moral damages on that account. In her view, the internal appeal proceedings were not conducted with due diligence, as it took six months for the Acting Director General to reply to her request for review of 21 February 2008 and the JAB issued its report on her three appeals lodged in April, May and July 2008 only in December 2009. The Director General took his final decision three months later, on 31 March 2010, a decision which was hand-delivered to her only on 10 May 2010. She adds that she suffered unequal treatment because she was transferred to a post having duties and responsibilities at a lower level. Moreover, the transfer to SGOB2 amounts to an abuse of authority as it was in substance a demotion, and because it appears to have been a measure of retaliation for her having challenged the selection process for the Administrative Assistant posts.

The complainant requests that various documents concerning the recruitment process for these posts be disclosed either directly to her or to the Tribunal for *in camera* review. She requests in particular the production of the "Recruitment Actions Monitoring System report" concerning her own application and the production of documents showing that the selected candidates submitted their applications in a timely manner and that they met the minimum qualifications for the post. She also requests the minutes of the meeting of the Joint Advisory Panel on General Service Staff mentioned by the Acting Director General in his letter of 29 August 2008.

She asks the Tribunal to set aside the impugned decision, to award her material and moral damages in the amount of 100,000 euros, as well as costs. She also asks the Tribunal to “affirm the recommendation of the JAB” concerning her temporary assignment to the Department of Technical Cooperation and to order the IAEA to do its utmost to find her a post in the Department of Safeguards. Lastly, she asks the Tribunal to order the Agency to report to it on the efforts made to reassign her to the Department of Safeguards.

C. In its reply the IAEA asserts that it acted at all times in good faith and fulfilled its duty of care. It explains that it has a wide discretion in relation to the appointment and promotion of staff and asserts that the decision not to appoint the complainant to one of the posts of Administrative Assistant was not tainted with any error of fact or law. Her application was properly considered and the recruitment panel had before it all the documentation necessary to reach a correct and legitimate decision. The fact that her job description had not been updated at the time of her application did not prejudice her because she was an internal candidate who was well known to the Agency. It points out that she was also interviewed by the panel and thus had the opportunity to explain at length the nature of her duties and her qualifications. It adds that the panel had access to her performance review reports.

The Agency acknowledges that there was delay in providing the complainant with an updated job description but asserts that this had no impact on the selection process and hence caused her no prejudice.

It denies that the complainant’s transfer decision was taken *ultra vires* and explains that in his memorandum of 27 March 2008 the DDG-SG did not purport to exercise any authority to transfer her; instead, he requested the Director of MTHR, to whom the authority “to apply the Staff Regulations and Staff Rules [...] in individual cases” has been delegated, to take appropriate action to effect the transfers. It submits that it did its utmost to accommodate the complainant, who had requested an “immediate” transfer in her

memorandum of 1 February 2008. Moreover, when she expressed her dissatisfaction with the transfer to SGOB2, she was transferred again. The Agency asserts that the transfer to SGOB2 was therefore properly effected at her then current level and that the complainant was required to perform duties that were consistent with her qualifications and experience.

Regarding her request for disclosure, the Agency indicates that on 10 August 2010 the complainant made the same request to the Director General, but that he refused it. Given that she did not pursue the matter in her internal appeals, this request constitutes a new claim and, as such, it should be dismissed as irreceivable. It points out that, according to the case law, while a candidate is entitled to know the reasons for the rejection of his or her own candidacy, this does not extend to having access to the recruitment panel's consideration of the merits of other candidates.

D. In her rejoinder the complainant contends that the Agency has already produced documents similar to those for which she seeks disclosure in previous cases before the Tribunal. According to her, her request is receivable because she is entitled to raise any new pleas before the Tribunal to support her claim that the decision not to select her for one of the posts of Administrative Assistant was flawed and, in particular, to show that the Agency decided to reopen the competition after she had been interviewed.

She alleges that she was not informed before being interviewed by the recruitment panel that it had been given an outdated description of her duties; consequently, she did not place any emphasis during the interview on her current duties. She stresses that while the Agency indicated in its reply that the panel "had access" to her performance review reports, this does not mean that it actually reviewed them. She notes that the defendant refuses to produce the Recruitment Actions Monitoring System report, yet it relies on this document to support its assertion that the recruitment panel's deliberations were not affected by the outdated job description.

Referring to the case law, she asserts that she had a right to have her application considered in good faith and in keeping with the basic rules of fair and open competition, and that undue delay in updating a job description may cause moral injury for which compensation is due. Lastly, she notes that the Agency has not replied to her plea concerning the excessive delay in processing her internal appeals.

E. In its surrejoinder the IAEA maintains its position. It submits that the complainant's request for an updated job description was dealt with in an expeditious manner prior to the completion of the internal appeal proceedings. It emphasises that when the job description was finalised she agreed that her post was graded at the G-5 level. Consequently, her argument that she might have been entitled to a higher grade and a higher salary is without justification. It denies any delay in the internal appeal proceedings and considers that the claim for moral damages on that ground should be rejected. It adds that when the complainant applied for the posts of Administrative Assistant, she filled in a personal history form which contained a full description of her duties for every position she had held at the Agency; hence the recruitment panel had all the necessary information concerning her qualifications and experience.

#### CONSIDERATIONS

1. In her complaint to this Tribunal, the complainant seeks to impugn what were, for the purposes of internal appeals, characterised as three decisions and asserts a right to obtain documents to prosecute her case. It is convenient to deal separately with the challenge to each of the three decisions and the factual and legal issues concerning each. The first decision concerns what is said to have been an implied decision not to update the complainant's job description. The second decision concerns the failure to select the complainant for one of three G-6 positions. The third decision concerns the alleged subsequent demotion of the complainant.

2. The impugned decision in the complaint is the decision of the Director General of 31 March 2010 to accept the recommendation the JAB made on 24 December 2009, to confirm the three decisions challenged in the internal appeals.

3. The complainant commenced with the IAEA in 1984 and it is common ground that she was a very well regarded staff member receiving merit awards for outstanding performance in 1996, 1998 and 2006. In the period September 2001 to March 2008, the complainant served as a Senior Office Clerk, at grade G-5, under the supervision of the Director of the Division of Concepts and Planning (SGCP). In March 2004 she filed a formal request for an updated job description. A revised job description was in fact issued in December 2008. The absence of an updated job description is a central element in the complainant's challenge to the selection process commencing in 2007 in which she failed to secure appointment to one of several G-6 positions. For the moment, however, what is being considered is a challenge to an implied decision not to provide the complainant in a timely manner with an updated job description, which she contested in her second appeal.

4. In its reply the IAEA "acknowledges that there was a long delay to provide the Complainant with an up-dated [job description]" but then moves directly to the question of whether the absence of an updated job description compromised the complainant's position in the selection process for the G-6 positions. This acknowledgement by the IAEA is noted by the complainant in her rejoinder and she then refers to Judgment 2658. In that case, the unmet request for an updated job description was linked to a request for the reclassification of the position. The Tribunal remitted the matter to the relevant organisation for a review of the job description and reassessment of the classification. However, the Tribunal also awarded the complainant moral damages in the amount of 10,000 euros arising from the "breach of process and undue delay in reviewing the complainant's job description and classification". In the judgment, the Tribunal observed that the complainant had a moral, economic

and professional interest in receiving an updated job description which truly reflected his duties and responsibilities, irrespective of whether the job description might justify reclassification. The Tribunal also observed that the complainant (who had by then left the organisation) had a professional interest in updating his curriculum vitae to reflect his actual work experience and was therefore entitled to obtain an accurate and up-to-date job description.

5. It is well settled in the Tribunal's case law that a failure to respond to a legitimate request of a staff member within a reasonable time may be deemed to be a refusal of the request if the staff member elects to accept that refusal. Additionally, egregious delay in responding to a reasonable request may involve a breach of the obligation to deal with the staff member in good faith. In the present case, the failure of the IAEA to provide the complainant with an updated job description over several years involved a violation of her rights for which she is entitled to compensation.

6. On 2 July 2007 the IAEA issued a vacancy notice for three Administrative Assistant positions. Each was a G-6 position. The complainant applied and was interviewed in July 2007. She was unsuccessful though she did not come to know this officially until February 2008. By a memorandum of 21 February, the complainant sought a review by the Director General of the decision not to select her for one of the G-6 positions. The response was provided by a letter dated 29 August 2008 from the Acting Director General. In the meantime, by a memorandum of 29 April 2008, the complainant appealed to the JAB about the selection process.

7. The complainant's challenge to the selection process is founded on the contention that the recruitment panel had before it an outdated job description and, accordingly, would not have fully understood or misunderstood the range of tasks and duties she was capable of performing and was performing. In its submissions the IAEA points to the material the recruitment panel in fact had before it including, and in particular, the complainant's performance review

reports which, according to the complainant's supervisor, reflected all the activities performed by the complainant.

8. The Tribunal's approach when reviewing a selection or an appointment decision is one of restraint. Such a decision is a discretionary one and is subject to only limited review. In Judgment 2040, under 5, the Tribunal held that such a decision may be quashed "only if it was taken without authority, or in breach of a rule of form or of procedure, or if it rested on an error of fact or law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence".

9. In the absence of any evidence which suggests that the recruitment panel or subsequently the JAB was led into factual error by a dated job description, it would be inappropriate to view the selection decision as compromised in the way the complainant suggests. This is particularly so given that she was interviewed for the position and does not now contend she was asked questions or engaged in dialogue which manifested a misunderstanding on the part of the recruitment panel of the work she was then doing or her skills and attributes.

10. In a memorandum of 10 August 2010 (after the Director General accepted the JAB's recommendation to reject her appeal), the complainant wrote to the Director General requesting to be provided with "all documents relating to the recruitment procedure and appointment, including the evaluation sheets of interviewed candidates". This request was declined. In her complaint she seeks access to three documents or classes of documents. The first is the Recruitment Actions Monitoring System report concerning the complainant's own application. The second is "evidence showing that the selected candidates submitted their applications timely and met the minimum qualifications for the post, including education and/or experience requirements". The third was "the meeting minutes or report of the [Joint] Advisory Panel on General Service

Staff mentioned by the Acting Director General in the letter of 29 August 2008 rejecting the request for review”.

11. The complainant is able to pursue this request for the documents before the Tribunal. However, in dealing with this request it is necessary to focus with some precision on the pleas the complainant seeks to make good by recourse to the documents. This is all the more so given that the Tribunal has refused to compel the production of documents created during or for the purposes of a selection process which might compromise the undoubted need for those involved in the selection to communicate candidly about the candidates (see Judgment 1513). The complainant’s challenge to the selection decision for the G-6 posts had two elements. The first, as just discussed, is that the decision not to select her was based in part on a dated job description. The second is that there was a breach of the Agency’s obligation of due process because there had been late applications considered and selected candidates did not meet the minimum requirements. The complainant contends in her brief that the argument on the second point can only be developed if the documents sought are produced.

12. The request for the first and third documents can be considered together. The Recruitment Actions Monitoring System report referred to by the JAB in its report appears to involve an evaluation of the complainant’s candidature. The Joint Advisory Panel on General Service Staff mentioned by the Acting Director General appears to have engaged in a review of the evaluation of all candidates. As to the first-mentioned report, there is no evidence, however slight, to suggest that it would or even might be probative of the complainant’s case that her dated job description influenced, in a way adverse to her, the selection process. Indeed, the JAB’s reference to the Recruitment Actions Monitoring System report points clearly in the opposite direction. As to any document concerning the deliberations of the aforementioned Joint Advisory Panel, again there is no evidence, however slight, that such a document might

be probative of the complainant's case. The production of these documents should not be required. Moreover, it must be said that the Tribunal cannot discount the possibility that these documents are sought for the purposes of finding whether there is a case of a different character from the one advanced in the brief rather than for the purposes of proving the case that is advanced.

13. In relation to the second class of documents ("evidence showing that the selected candidates submitted their applications timely and met the minimum qualifications for the post, including education and/or experience requirements"), the doubt raised about satisfaction of minimum qualifications coupled with the suggestion that selected candidates may not have met them, is purely speculative. Nothing is pointed to by the complainant that provides a scintilla of evidence, even by inference, that the selection process was tainted in this way. The asserted vice in the selection process does not provide a foundation for requiring the production of the documents. In relation to the timeliness of the applications, the complainant advances no argument as to why this is an issue. In the absence of any argument to the extent that untimely applications constitute, as a matter of law, a procedural irregularity, it is also inappropriate to require the production of this second class of documents.

14. It is necessary to consider next the complainant's challenge to a decision to transfer her and, on her account, thereby demote her. The alleged demotion arises from events in February, March and April 2008. In a memorandum of 2 July 2008 to the Secretary of the JAB, the complainant identified the transfer that constituted a demotion, against which she wished to appeal, as a transfer referred to in, or evidenced by, her e-mail of 9 April 2008. She indicated that she wished to appeal against a decision whereby she had been "moved into a G-4 post rather than a G-5 post in spite of the fact that G-5 posts [had been and] were available in the Department of Safeguards". Thus she identified the decision in respect of which she maintained her internal appeal, namely a transfer which took effect on 1 April 2008.

15. In her brief the complainant recounts events commencing with her oral request in late January 2008 to be transferred out of SGCP. The request was made when it was apparent to the complainant that it was likely that her application for the G-6 posts had been unsuccessful. The complainant made the request in writing on 1 February 2008 seeking “an immediate transfer, at a higher level, if possible, otherwise a lateral one, anywhere within the Department of Safeguards but outside of SGCP”.

16. The complainant returned from leave on 25 March 2008 and commenced in the position to which she had been transferred on 1 April 2008. In an e-mail of 9 April 2008 to DDG-SG she complained that her lateral transfer had become “a move from a G-5 post to a G-4 post” alleging that it was a “kind of retaliation for having the courage to speak up”. The e-mail response that day was benign. However, also that day the complainant sent a memorandum to the Director of MTHR complaining about the transfer and indicating she “would appreciate [him] correcting this transfer so that [she could] remain in a G5 post or [his] assurance that sitting in this G4 post [would] in no way jeopardize [her] career options in the Agency in the future”. The complainant also requested an assurance that she would remain on a G-5 salary “while in the G4 post”.

17. A written response to the complainant’s memorandum was sent by the Director of MTHR on 14 April 2008 in which he recounted that the complainant had temporarily been reassigned to “perform the function of Implementation Assistant at the G-5 level” and concluded: “I can assure you the job description outlining your functions which is currently being finalised by your supervisor, will consist of functions at the G-5 level”.

The complainant was transferred from this position on 1 July 2008.

18. In her brief, the complainant argues that the transfer decision was taken *ultra vires*, involved a failure to comply with the duty of good faith, involved unequal treatment and an abuse of authority, and involved a breach of the principles established by this Tribunal

concerning consultation prior to a transfer being made and respect of a staff member's dignity. In its reply the defendant denies that the transfer decision was taken *ultra vires* and argues that it involved the exercise of delegated authority. It also denies that it violated principles established by the Tribunal. It points to the fact that the transfer was one the complainant had requested and indeed that it be "immediate". The Agency submits that it did what it could to accommodate the complainant's request.

19. In her rejoinder the complainant refers to several principles emerging from the Tribunal's case law and which she argues are applicable to her case. The first was an obligation on an organisation to do all that is practicable to see that the staff member is given work and responsibility appropriate to his/her grade (see Judgment 411, under 3, and, to similar effect, Judgment 630, under 5). Another was that a requirement of the case law is that the staff member be given a hearing beforehand when the transfer may harm his/her dignity or private interests and is not a matter of urgency (see Judgment 1496, under 9). Moreover, the complainant contends that even if there was delegated authority to effect the transfer, her rights were not respected.

20. In its surrejoinder the IAEA repeats some of its earlier submissions and seeks to distinguish the instant circumstances from those in the judgments to which the complainant referred in her rejoinder.

21. The facts of this case are somewhat removed from the circumstances which gave rise to the principles the complainant relies on, particularly in her rejoinder. The transfer was at her request. And her request was that the transfer be immediate. As has been noted, it was common ground that the complainant was a respected and valued member of staff. There is no reason to doubt that the transfer was made to meet her request. While there is room to debate whether the position to which she was transferred was, in some nominal way, a G-4 position, it is nonetheless apparent that steps were being taken to ensure the position had the characteristics of a G-5 position. That

is, the IAEA was seeking to ensure that the complainant's request was fully satisfied. The decision to transfer her was not tainted with the errors or flaws alleged in the complaint. The complainant's challenge to the decision to transfer her must fail.

22. The complainant seeks moral damages for the delay attending the internal appeal proceedings. She notes that she had lodged appeals to the JAB by memorandums of 29 April 2008 (an appeal about the selection process for the G-6 positions), 5 May 2008 (an appeal about the failure to provide her with an updated job description) and 2 July 2008 (an appeal about her transfer and purported demotion and about the decision of 12 February 2008 informing her that she had not been selected for any of the G-6 posts). She notes that the request for review of the selection process she made on 21 February 2008 was not responded to until 29 August 2008. She also notes that the JAB did not issue its report until 24 December 2009 and that the Director General did not issue his final decision until 31 March 2010. Lastly, she notes that the final decision was hand-delivered to her on 10 May 2010.

23. In its reply the IAEA does not address this plea. The complainant notes this failure in her rejoinder. The issue is then taken up by the IAEA in its surrejoinder but it focuses on peripheral issues. It does not address the central issue, namely that it took almost two years for the Agency to process her appeals and make a final decision.

24. Much of this time is attributable to the time the JAB took to consider the complainant's three appeals. At the time the JAB issued its report in December 2009 on the three appeals, a period of almost 20 months had elapsed from the filing of the complainant's first appeal and almost 18 months had elapsed from the filing of her third and last appeal.

25. As the Tribunal has repeatedly observed, internal appeals must be conducted with due diligence and with regard to the care owed by an international organisation to its staff (see for example

Judgment 2522, under 7). While the time an appeal might reasonably take will often depend on the particular circumstances of a given case, it has been said by the Tribunal in Judgment 2902, under 16, that “by any standards a delay of nearly 19 months to complete the internal appeal process is unreasonable”. The IAEA in these proceedings did not, in any substantial way, seek to justify the delay. Accordingly, the complainant is entitled to moral damages for breach of the duty of care owed to her, occasioned by the very lengthy delay in addressing her internal appeals.

26. The damages for the delay in the internal review and the failure to update the complainant’s job description are assessed in the amount of 5,000 euros. The complainant should have her costs in the amount of 2,000 euros.

#### DECISION

For the above reasons,

1. The IAEA shall pay the complainant the amount of 5,000 euros in compensation for moral injury.
2. It shall also pay the complainant 2,000 euros in costs.
3. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 9 November 2012, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Giuseppe Barbagallo  
Dolores M. Hansen  
Michael F. Moore  
Catherine Comtet