

**G.**  
**v.**  
**WHO**

**122nd Session**

**Judgment No. 3685**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. G. against the World Health Organization (WHO) on 21 November 2013 and corrected on 13 December 2013, WHO's reply of 16 April 2014, the complainant's rejoinder of 18 August and WHO's surrejoinder of 9 December 2014;

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 challenges the decision to abolish her post and to terminate her appointment.

The complainant joined WHO in May 2003 on a temporary appointment. She was appointed, with effect from January 2007, to a fixed-term position as Health Economist at grade P-4 in the Cost Effectiveness, Expenditure and Priority Setting Unit (CEP) of the Health System Financing Department (HSF), in the Health Systems and Services Cluster (HSS).

The complainant requested and was granted leave without pay (LWOP) from November 2008 until November 2009 to take up a position at the World Bank. At her request her LWOP was extended by one year.

On her return to WHO in November 2010, the complainant was assigned to the same position she occupied before going on LWOP, but with different duties. In particular, she was assigned duties in the HSF Director's Office.

On 19 January 2011, in view of the current financial constraints, WHO issued Information Note 3/2011, stating that the Director-General had decided to establish a Road Map Review Committee (RMRC) to review proposals for the abolition of a significant number of longer term positions. The RMRC met to discuss the restructuring of the HSS departments in April 2011 and supported the proposal to abolish 15 positions across five HSS departments, including the complainant's position. That same month the complainant requested that her position description be revised, as it had remained unchanged since 2007.

On 15 May 2011 the Director-General approved the restructuring proposals for HSS.

The revision of the complainant's position description was carried out in May and concluded in July 2011.

By a letter of 1 September 2011 the complainant was formally notified of the termination of her appointment, as the post she occupied was being abolished for financial and programmatic reasons. Her last day of service would be 31 December 2011.

On 20 September 2011 the complainant requested that the decision to abolish her post be reviewed. On 21 October she filed a notice of intention to appeal with the Headquarters Board of Appeal (HBA) and was then granted a suspension of her appeal pending the outcome of her request for review. She was informed by a memorandum of 8 December 2011 that her request had been denied. The following day she filed her statement of appeal asking for the decision of 1 September 2011 to be set aside and for reinstatement in a suitable fixed-term position. She claimed compensation for the moral and professional prejudice caused, as well as costs. The written proceedings before the HBA closed at the end of May 2012.

In March 2013 the complainant was informed that the HBA was organizing special meeting sessions for May/June 2013. In April the

HBA Chair provided the complainant with details about the “HBA sessions” which would involve grouping appeals contesting decisions relating to the 2011-2012 restructuring exercise and asked her to complete a form stating whether or not she agreed to her appeal being heard as part of an HBA session. The complainant did not agree.

In May 2013 the HBA secretariat attached a proposed list of Board members who would hear her appeal, to which the complainant’s lawyer responded with no objection.

On 24 June 2013 the complainant’s lawyer requested that the complainant’s case be heard by the HBA within the next two months. The HBA secretariat replied on 16 July that the Board was finalizing its consideration of the appeal and that the report would be submitted in the following weeks to the Director-General for her final decision. The complainant’s lawyer was informed by an email dated 18 October 2013 that the HBA’s report would be transmitted to the Director-General by the end of November 2013 and that she would be notified once the report had been sent for decision.

The complainant filed her complaint on 21 November 2013 against what she considers to be an implied rejection of the claim she had filed on 24 June 2013. She asks the Tribunal to set aside the decision to terminate her appointment and to order her reinstatement in a suitable fixed-term position. She claims material damages for the unreasonable delay in the internal appeal proceedings and for the prejudice caused by the absence of a final decision, compensation for the moral and professional prejudice caused, as well as costs. The complainant requests the Tribunal to order WHO to produce “all information related” to her post.

On 19 December 2013 the Director-General wrote to the complainant, enclosing a copy of the HBA’s report, noting that it had recommended that her appeal together with all her requests for relief be dismissed as unfounded. Before deciding whether to accept the HBA’s recommendation, the Director-General informed the complainant that she wished to provide an opportunity for the appeal to be settled amicably.

As the attempts to reach a mutually acceptable outcome proved unsuccessful, the Director-General informed the complainant by a letter dated 31 March 2014 that she had decided to follow the HBA’s

recommendation to dismiss her appeal as unfounded. In addition, she noted that the complainant had not appealed against the decision to assign her, on her return from LWOP, to perform functions in the Office of the Director, HSF, and that any appeal against that decision would, in any event, be time-barred.

In its reply of April 2014 WHO submits that the complaint is irreceivable for failure to exhaust internal means of redress, that her claims relating to her assignment to the HSF Director's Office upon her return from LWOP are time-barred, and that her complaint is entirely unfounded.

In her rejoinder of August 2014 the complainant maintains that the unacceptable delay in the internal appeal procedure justified her direct access to the Tribunal. The decision of 31 March 2014 is not mentioned in her submissions.

In its surrejoinder of December 2014 WHO reiterates its objection to receivability.

#### CONSIDERATIONS

1. On 21 November 2013 the complainant filed a complaint with the Tribunal impugning an implied decision of WHO. The complaint form identified 24 June 2013 as the date on which the complainant had notified WHO of her claim. At the time the complaint was filed, the complainant's internal appeal had not been determined. This fact founds an argument by WHO that the complaint is irreceivable as the complainant had not exhausted internal means of redress as required by Article VII, paragraph 1, of the Tribunal's Statute.

2. It is convenient to deal with the issue of receivability at the outset. The complainant commenced working with WHO in May 2003 and she continued working with WHO under a series of temporary appointments until appointed to a fixed-term position in January 2007. In 2008 the complainant sought and was granted leave without pay (LWOP) to take up a position with the World Bank, initially for one year though this was later extended. The complainant resumed employment

with WHO in late 2010. Without detailing events which led to a review of the position the complainant held, a decision was taken in 2011 to abolish her position. By a letter of 1 September 2011 she was formally informed of the decision to abolish her position and also given notice of the termination of her appointment effective 31 December 2011.

3. On 21 October 2011 the complainant filed a notice of intention to appeal the decision in the letter of 1 September 2011 to the HBA and filed a statement of appeal on 9 December 2011. Between then and May 2012 the parties submitted a reply, rejoinder and surrejoinder. In that period there were various extensions of time of a little over three months that had been agreed to by the complainant and WHO. This included an extension of a little less than a month for the complainant to file her rejoinder. It was not until January 2013 that the HBA informed the complainant that its secretariat was in the process of organising a meeting of the HBA. The circumstances which had led to the abolition of the complainant's position had, on WHO's account, resulted from a restructuring during a period of financial stringency. Whether this is correct or not in relation to the complainant's position, the HBA was nonetheless dealing, in late 2012 and early 2013, with almost 40 internal appeals arising from the restructuring exercise at Headquarters. This had led the HBA to propose generally, and to do so to the complainant by an email of 26 March 2013 and by letter of 22 April 2013, that several appeals would be dealt with in a session enabling consideration of common elements as well as individual circumstances. This proposal was rejected by the complainant on 25 April 2013. On 17 May 2013 the HBA secretariat wrote to the complainant noting her refusal to have her appeal heard as part of a session and attaching a list of proposed HBA members to hear her appeal.

4. On 24 June 2013 the complainant's lawyer wrote to the HBA complaining about the delay, indicating that the complainant's "patience and understanding [had] reached its limits", and requesting that the complainant's case be heard within two months and be the subject of a finalised report. It was not entirely clear whether this request was seeking that the finalised report be completed within the two month period as

well. The lawyer noted that if that request was not met, the complainant would “have no choice but to submit her case to the Administrative Tribunal”. In a letter dated 16 July 2013 the Executive Secretary of the HBA responded by saying that the HBA was finalising its consideration of the complainant’s appeal and that the report of the HBA would be submitted in the “next coming weeks” to the Director-General for her final decision. This did not occur. In fact, in an email of 16 October 2013 an enquiry was made on behalf of the complainant’s lawyer about whether the HBA had finalised its report and whether it had been received by the Director-General. This resulted in an email response of 18 October 2013 by the HBA which said:

“[T]he HBA Board has met and has reviewed this appeal in detail. The HBA is in its last stage of finalizing the report containing the recommendations for the Director-General and we are planning of (*sic*) transmitting it by end of November to the [Director-General]. We will revert back to you once the Board’s report is sent to the Director-General for her decision.”

5. Consistent with what was said in the HBA’s response, on 20 November 2013 the HBA’s report was transmitted to the Director-General. As noted earlier, the complainant’s complaint before the Tribunal was filed on 21 November 2013. On 22 November 2013 the HBA secretariat wrote to the complainant’s lawyer informing her that the HBA’s report had been sent to the Director-General. On the same day a person assisting the lawyer informed the HBA that “due to the lack of action within the deadline to our letter of 24 June 2013, we have submitted an appeal to the Tribunal on 21 November 2013”. A copy of the HBA report (recommending dismissal of the complainant’s appeal and all her requests for redress) was sent to the complainant by letter dated 19 December 2013. In that letter the Director-General indicated that she would like there to be an opportunity to see if the appeal could be settled amicably before she decided whether to accept the recommendation of the HBA. There were discussions though the appeal was not settled and on 31 March 2014 the Director-General wrote to the complainant informing her that she agreed with the HBA’s conclusions that the decision to abolish her post and terminate her fixed-term appointment had been in accordance with WHO’s Staff Regulations and Staff Rules and had not been tainted by bias or personal prejudice.

Accordingly, the Director-General indicated that she accepted the recommendation to dismiss the appeal.

6. Article VII, paragraph 1, of the Tribunal's Statute serves several related purposes each of which is important. They have been discussed by the Tribunal in many judgments and a comparatively recent example is Judgment 3222, considerations 9 and 10. Nonetheless, the Tribunal has accepted that, in certain circumstances, the requirement in Article VII, paragraph 1, to exhaust internal means of redress can be taken to have been met if the internal appeal proceedings are unlikely to end within a reasonable time (see, for example, Judgment 2939, considerations 9 to 12). This very limited exception to the requirement imposed by the Article is to be determined by reference to the circumstances as they exist at the time the complaint is filed.

7. In the present case, the complaint, as noted earlier, was filed on 21 November 2013. It was filed in circumstances where one month earlier, the complainant's lawyer had been informed that the HBA proposed to transmit its report, which was then "in [the] last stage of finaliz[ation]", to the Director-General by the end of November 2013. Thus the complainant made a decision to file her complaint only days before there was a real possibility that the HBA's recommendation concerning the outcome of her appeal would be in the hands of the Director-General. It is true the complainant and her lawyer would have been entitled to be a little sceptical about the firm intimation given in the email of 18 October 2013 that a report would be submitted by the end of the following month having regard to the failure of the HBA to submit a report in relation to her appeal in the "next coming weeks" as indicated in its communication of 16 July 2013. However they could not be entirely dismissive of what was said in the email of 18 October 2013 about when it was likely the HBA's report would be finalised and should have accepted that there was a likelihood that the report would be finalised and submitted to the Director-General by the end of November 2013.

8. It is also true that the internal appeal had taken a very lengthy time to reach a point where the HBA forwarded to the Director-General a report on the appeal in November 2013. It is to be recalled that the appeal was lodged on 21 October 2011 and the pleas had been finalised by May 2012. However it is not sufficient that there has been a failure to proceed with all proper speed and diligence in relation to the internal appeal. It is only if the proceedings have been so protracted that the delay is inordinate, unexplained and inexcusable that a complainant can proceed directly to the Tribunal (see Judgment 1486, consideration 11). In the present case the complainant has not demonstrated any of these characteristics. Moreover what is relevant is not only the delay between the time the internal appeal was commenced and the filing of a complaint with the Tribunal but also the further delay which was reasonably anticipated (see Judgment 1486, consideration 12). When the complainant filed her complaint on 21 November 2013 it cannot be said that she could reasonably anticipate further delay, or at least further lengthy delay, having regard to what was said in the email of 18 October 2013.

9. The complainant has not demonstrated that she falls within the exception to the requirement imposed by Article VII, paragraph 1, of the Statute of the Tribunal. Accordingly she has not exhausted her internal means of redress and her complaint is irreceivable. It will, for that reason, be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.



Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ