

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

109th Session

Judgment No. 2944

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Ms C. C. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 October 2008 and corrected on 15 February 2009, the Organization's reply of 20 April, the complainant's rejoinder of 22 May and UNESCO's surrejoinder of 1 September 2009;

Considering the second complaint filed by the complainant against UNESCO on 7 March 2009 and corrected on 30 April, the Organization's reply of 27 July, the complainant's rejoinder of 4 and 10 September and UNESCO's surrejoinder of 13 October 2009;

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

Having examined the written submissions;

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

A. The complainant, a Senegalese national born in 1949, entered the service of UNESCO on 1 September 1979 at grade GS-2. At the material time she held grade G-5.

On 5 January 2004 her landlady wrote to the Director of the Bureau of Human Resources Management to request the Organization's

assistance in obtaining the payment of arrears in rent and other charges which the complainant owed her. On 27 January 2004 the Director informed the complainant that she had received this letter and, reminding her of her obligations as an international civil servant, invited her to “put [her] affairs in order [...] at the earliest opportunity” and to “ensure that, in the future, the Organization would not be embroiled in [her] private obligations”. On 20 January 2006 UNESCO notified the complainant that, since she had not put her affairs in order despite numerous reminders to do so, her case would be referred to a Joint Disciplinary Committee in accordance with Staff Rule 110.2, by reason of her unsatisfactory conduct, unless she confirmed in writing by 1 March 2006 that the matter had been finally settled.

UNESCO was informed by a *note verbale* of 23 June 2006 from the French Ministry of Foreign Affairs that the dispute between the complainant and her landlady had been referred to the Ministry and that two earlier court decisions ordering the complainant to pay rent arrears had not had any effect. It had therefore been decided to defer the extension of the complainant’s special residence permit until such time as the situation had been rectified. On 13 July UNESCO’s Administration forwarded this note to the complainant and invited her to confirm in writing by 31 August 2006 that the matter had been finally resolved. On 22 September the Director of the Bureau of Human Resources Management notified the complainant that the Director-General had decided to refer her case to a Joint Disciplinary Committee. She was charged with failing to abide by the law and public policy of the host State, compromising the reputation and image of the Organization, and breaching the Standards of Conduct for the International Civil Service.

By a further *note verbale*, dated 7 November 2006, the Ministry of Foreign Affairs apprised UNESCO “of the lack of respect shown by the [complainant] towards French institutions” in a television

programme, which had revealed that she still had no intention of complying with the numerous decisions of French courts ordering her to pay her rent arrears, and it asked the Organization to take steps to put an end to “this unsatisfactory situation”.

The Joint Disciplinary Committee convened on 17 January 2007 and in its report of 24 January unanimously recommended that the Director-General adopt the disciplinary measure of termination for unsatisfactory conduct in accordance with Staff Regulation 10.2 and Staff Rule 110.1. The Director-General accepted this recommendation and the complainant was informed on 16 February that he had decided to impose on her the disciplinary measure of termination for unsatisfactory conduct with effect from 19 February 2007, but that she would be paid two months’ salary on the date of her separation from service. On 27 February the complainant submitted a protest against this decision to the Director-General under paragraph 7(a) of the Statutes of the Appeals Board. She was informed by a letter of 18 April that the Director-General had confirmed the decision to terminate her appointment. On 19 April 2007 she sent a notice of appeal to the Appeals Board to notify it that she wished to pursue her contestation of the decision to terminate her appointment.

On 15 February 2008 the complainant submitted a further protest to the Director-General to request her promotion to grade P-3 and to complain of the moral harassment to which she had been subjected by the managers of the Bureau of Human Resources Management and of the disclosure of personal facts and data concerning her, for which she claimed compensation. Having received no reply, on 17 April she sent a notice of appeal to the Secretary of the Appeals Board. By a letter of 5 May 2008 the Director of the Bureau of Human Resources Management informed the complainant that the Director-General had dismissed her protest of 15 February as unfounded in fact and in law and as being manifestly irreceivable, mainly on the grounds that the complainant no longer had *locus standi* to submit such a protest, since she had no legal ties with the Organization following the termination of her appointment. That is the decision impugned in the first complaint.

The Appeals Board met on 18 June 2008 to consider the appeal of 19 April 2007. In its opinion of 11 July it recommended that the Director-General confirm the decision to terminate the complainant's appointment. It also recommended that the relevant services should pay the complainant the equivalent of three months' salary and entitlements owing to the injury she had suffered on account of "errors in the administrative procedures relating to her case". The acting Director of the Bureau of Human Resources Management informed the complainant by a letter of 28 August 2008 that the Director-General had decided to endorse the Board's recommendation to confirm the termination of her appointment. That is the decision impugned in the second complaint.

B. In her first complaint the complainant submits that, since her protest of 15 February 2008 was receivable, so too was her notice of appeal of 17 April. In her opinion the decision to terminate her appointment does not yet have *res judicata* authority and she therefore retains a cause of action giving her *locus standi*. In addition, she rejects the Administration's argument – put forward in the letter of 5 May 2008 – that she waited for almost a year after termination before submitting the above-mentioned protest. She explains that she had already asked for promotion in her protest of 27 February 2007 and that she was unable to file her second complaint any earlier because of the time limit applying to the Administration's response.

On the merits, the complainant considers that she is the victim of a "*de facto* blockage of promotion", which she regards as a hidden disciplinary measure adopted in breach of Staff Rule 110.2, and she contends that the Administration neglected its duty of care towards her and its obligation to act in good faith.

In addition, she maintains that her protest against moral harassment and the disclosure of personal facts and data is in reality an appeal to the highest authorities of UNESCO. In her eyes these actions constitute serious misconduct. By acting as they did, the

managers of the Bureau of Human Resources Management did not fulfil their duty to display justice, fairness and integrity when managing staff.

In her second complaint the complainant asks the Tribunal to join her two complaints in order that it might have “a comprehensive view of her case”. Relying on the fact that the final decision of 28 August 2008, dismissing her appeal, was in English but that she was unable to understand it properly, and that it was only on 12 December that she received, at her request, a translation into French under cover of a letter postmarked 8 December 2008, she suggests that the Tribunal should choose one of these dates as that on which the ninety-day period for filing a complaint should begin.

On the merits, she contends that she was subjected to a disciplinary measure for failure to comply with the Standards of Conduct for the International Civil Service, yet the text setting forth these standards was not yet in existence when her case was referred to the Joint Disciplinary Committee, since it was published by the Director-General on 30 January 2007. Relying on the rule *nulla crimen sine lege*, she considers that the Organization breached the principle of non-retroactivity.

She submits that when her case was examined by the Joint Disciplinary Committee, the Administration was over-represented, that she was unable to consult the Committee’s report and was therefore unable to rely on this report in her appeal to the Appeals Board and, lastly, that the managers of the Bureau of Human Resources Management abused their authority and displayed personal prejudice against her.

In her first complaint the complainant asks the Tribunal to award her 150,000 euros in compensation for injury suffered on account of moral and administrative harassment and 300,000 euros in compensation for the injury suffered “by [her] and her family on account of the intentional disclosure of personal data concerning her”. She asks that UNESCO be ordered to pay costs and interest on the sums claimed as from the date of the filing of the complaint.

In her second complaint she seeks the setting aside of the decision to terminate her appointment and the presentation of a written apology from UNESCO. She requests the payment of her full salary from 1 February 2007 to 5 June 2009, the date on which she should have taken retirement, and a payment “in lieu of notice” together with all her statutory entitlements. Lastly, she claims moral damages in the amount of 450,000 euros, costs, and interest on all sums claimed.

In both complaints, she asks the Tribunal to recommend that she be promoted to grade P-3 as from 1 January 2005.

C. In its reply to the first complaint UNESCO contends that the complaint is irreceivable because internal means of redress have not been exhausted. It adds that the request for promotion is completely unconnected with the impugned decision and is therefore also irreceivable.

On the merits and subsidiarily, the Organization contends that the conduct of the complainant who, for more than ten years, flouted the Standards of Conduct for the International Civil Service by not honouring her private obligations and ignoring the orders of the legal and administrative authorities of the host State, compromised the reputation and image of UNESCO. The decision to terminate her appointment was taken on the recommendation of the Joint Disciplinary Committee in accordance with the applicable texts. It submits in this respect that, according to well-established case law, the Tribunal recognises that international organisations have the discretion to terminate a staff member’s appointment as a disciplinary measure if “it has lost confidence in the staff member and no longer believes that he will show due respect for its good name”. The Organization adds that the complainant has never disputed the facts forming the basis of the termination of her appointment for unsatisfactory conduct.

With regard to the allegation of moral harassment, the Organization refers to Administrative Circular No. 2232 of 20 April 2005 entitled “Anti-harassment policy” which defines moral

harassment. It submits that the various memoranda which the Administration sent to the complainant in connection with her unpaid rent and her contempt for the Standards of Conduct for the International Civil Service cannot be said to constitute moral harassment within the meaning of the circular. It emphasises that the Tribunal's position on moral harassment is crystal clear. On several occasions it has held that allegations of harassment must be supported by specific facts and that it is up to the person alleging that he or she has suffered harassment to prove the facts. The complainant's allegations have not, however, been substantiated.

In its reply to the second complaint UNESCO states that it does not object to the joinder of the two complaints, although the legal issues at stake arise from two decisions which are not identical – one of them is not challengeable directly before the Tribunal because internal means of redress have not yet been exhausted – and are related to facts which are different.

With regard to receivability, the Organization considers that the complaint is time-barred because it was filed more than ninety days after the date of the official notification of the Director-General's final decision of 28 August 2008. In this connection it rejects the complainant's argument that the period in question did not begin until 8 December 2008, the date on which she was sent the French translation of this decision, because English is a working language of the Organization and Article VII of the Statute of the Tribunal contains no requirements in the matter. In addition, the Organization considers that the claim in this complaint that the complainant be promoted to grade P-3 is merely a vexatious repetition of the claim presented in the first complaint.

On the merits and subsidiarily, UNESCO reiterates the argument set out in its reply to the first complaint concerning the lawfulness of the impugned decision which, in its opinion, was adopted in accordance with the applicable rules and procedures.

In addition, the Organization indicates that the Standards of Conduct for the International Civil Service were available on its

intranet. It therefore considers that the complainant may not rely on either the principle of non-retroactivity or her ignorance of the law as a reason for not honouring her private and professional obligations.

D. In her rejoinders the complainant states that she abided by the provisions of the Statutes of the Appeals Board. For this reason, if internal means of redress have not been exhausted, the blame lies exclusively with the Administration. Moreover, she rejects the Organization's argument that she claimed that her second complaint was receivable because it was filed within ninety days of the notification of the translation of the decision of 28 August 2008. She explains that she merely made "a suggestion to the Tribunal" and was drawing attention to the fact that the Organization has a long period of time in which to reply. She presses her plea that the disciplinary measure imposed on her was not based on any text.

In addition to the claims presented in her first complaint, she asks the Tribunal to impose "severe and exemplary" penalties on UNESCO and to alert Member States to the "unacceptable practices" of the managers of the Administration.

E. In its surrejoinders the Organization fully maintains its position. It rejects the complainant's allegation that the termination of her appointment did not rest on any text. The decision to terminate her appointment was taken on the basis of the Staff Regulations and Staff Rules. It adds that both the earlier version of the Standards of Conduct for the International Civil Service and the revised version of 2007 applied to the complainant. In addition, it points out that the Joint Disciplinary Committee's report was forwarded to the complainant even though this was not required under the existing texts.

CONSIDERATIONS

1. The complainant was recruited by UNESCO on 1 September 1979 at grade GS-2, as an audio-typist in the French Translation Section of the Bureau of Conferences, Languages and Documents.

At the material time, she held grade G-5 and was performing secretarial duties in the Division of Information Systems and Telecommunications of the Sector for Administration. The complainant should normally have retired on 5 June 2009.

2. In January 2004 the complainant's landlady sent UNESCO a letter seeking the Organization's assistance in obtaining the payment of arrears in rent and various charges which the complainant owed her. By a memorandum of 27 January 2004 the Director of the Bureau of Human Resources Management reminded the complainant that her "status as an international civil servant required irreproachable conduct from [her] in all circumstances (Staff Regulation 1.4) and, in particular, the honouring of [her] financial obligations" and she invited her to "put [her] affairs in order in this case at the earliest opportunity" and to "ensure that, in the future, the Organization would not be embroiled in [her] private obligations".

3. As the complainant did not take any of the requisite steps to this end, the landlady again sent a letter to UNESCO in which she enclosed a copy of an interim order of the court of first instance of Gonesse (*Tribunal d'instance*) of 15 September 2003 requiring the complainant and her former spouse jointly to pay the rent arrears at issue. On 30 April 2004 the court then served an order of attachment of the complainant's earnings on UNESCO with a view to securing reimbursement of this debt. This order was subsequently followed by several other procedural documents with the same purpose.

4. Although UNESCO refused to execute these various orders, which conflicted with its immunity under Articles 6 and 14 of the Agreement regarding the Headquarters of UNESCO and the privileges and immunities of the Organization on French Territory and with Staff Rule 103.19(f) which prohibits any attachment of staff members' salaries, the Organization did vigorously remind the complainant of her duties. Indeed, by a series of memoranda sent to her between March 2004 and January 2006 she was repeatedly and with increasing urgency invited to honour her private obligations and to respect the

laws of the Organization's host State. Despite the fact that these various memoranda set deadlines for putting her affairs in order and, as from March 2005, even specified that failure to meet the deadline would entail disciplinary measures, the complainant was simply wont to reply to the Organization that she was endeavouring to repay her debts, but none of these promises was ever actually fulfilled.

5. The French Ministry of Foreign Affairs likewise drew UNESCO's attention to what it regarded as unacceptable conduct on the part of the complainant. In a *note verbale* of 21 October 2005 it emphasised that Article 28 of the Headquarters Agreement obliged the Organization to make provision for appropriate modes of settling disputes involving any official who enjoyed immunity by reason of his or her official position. In addition, in a further *note verbale* of 23 June 2006 the Ministry informed UNESCO of the existence of other decisions of French courts in similar cases in 1994 and 1997 where the complainant had been found guilty of not paying her rent to other landlords. This same note announced that, in order to compel the complainant to discharge her obligations, it had been decided to defer the extension of the special residence permit for France which she held as an international civil servant.

6. On 13 July 2006, after receiving the latter note, the acting Director of the Bureau of Human Resources Management sent the complainant a further memorandum in which he emphasised yet again that "[her] conduct in these private matters constitute[d] an unacceptable breach of Staff Regulation 1.4 and of the Standards of Conduct for the International Civil Service, with the serious repercussions that this w[ould] have on the Organization's image in the host State". This memorandum set one last deadline, 31 August, for the complainant finally to put her affairs in order.

7. By an interim order of the Paris Administrative Court delivered on 29 July 2006 the French Minister of Foreign Affairs was enjoined, within seven days as from the date of the order, to extend the complainant's special residence permit on the grounds that there was

no basis on which this authority could refuse to issue such a permit to a staff member of UNESCO. This order made it clear, however, that it did not prevent the Minister from renewing the permit for only a short period of time in order that “UNESCO, in its capacity as the employer whose image is necessarily compromised by the conduct of its staff member, may determine the relevant disciplinary measures to be taken in the event of a continued failure to pay arrears in rent and charges”.

8. Since, on this basis, the Minister of Foreign Affairs issued the complainant with a special residence permit for one month only, the acting Director of the Bureau of Human Resources Management sent her another memorandum on 11 August 2006 to inform her that “[a]s this private affair ha[d now] become urgent” the Bureau “[wa]s compelled” to recommend to the Director-General that her case be submitted to a Joint Disciplinary Committee by reason of her “unsatisfactory conduct”.

9. By a memorandum of 22 September 2006 the complainant, who had still not discharged her debts, was informed that disciplinary proceedings were being initiated before a Joint Disciplinary Committee against her for failure to abide by the law and respect the public policy of the host State, for compromising the reputation and image of the Organization, and for breaches of the Standards of Conduct for the International Civil Service.

10. After the case of the complainant’s unpaid rent had been discussed in a French television programme broadcast on 27 October, the Ministry of Foreign Affairs sent a *note verbale* to UNESCO on 7 November 2006 in which it observed that “[t]he new dimension which this affair has taken on is liable to tarnish the reputation of the Organization itself on account of the lack of respect display[ed] by the [complainant] towards French institutions”.

11. In its report of 24 January 2007 the Joint Disciplinary Committee, which acknowledged that all the charges levied against the complainant were well founded, unanimously recommended that she

should be subjected to the disciplinary measure of termination under Staff Regulation 10.2 and Staff Rule 110.1. By a decision of 16 February 2007 the Director-General followed this recommendation and therefore ordered this termination with effect as from 19 February, though he awarded the complainant two months' salary to allow for the fact that this measure was to take effect without notice.

12. As the complainant's protest against this disciplinary measure was dismissed, the case was referred to the Appeals Board which, in its opinion of 11 July 2008, unanimously recommended that the disputed decision be confirmed. However, by a majority of three votes to two, the Board also recommended that the complainant be granted the equivalent of three months' salary and entitlements owing to "errors in the administrative procedures relating to her case". The dissenting members disputed the existence of these errors.

13. By a decision of 28 August 2008 the Director-General, who accepted only the first of these two recommendations, rejected the complainant's appeal. That is the decision impugned in the second complaint.

14. In the proceedings which led to that decision the complainant had contended that she had been unduly denied promotion and had therefore asked to be promoted to grade P-3 as from 1 January 2005. Moreover, she had bitterly criticised the conduct of the managers of the Bureau of Human Resources Management, whom she accused of wilful and serious misconduct towards her. She considered that she had been subjected to moral and administrative harassment by these managers and she further submitted that they had deliberately divulged confidential information about her to third parties with the intention of harming her.

15. Since UNESCO contended in its written submissions to the Appeals Board that this argument gave rise to a dispute unrelated to the challenge concerning the disciplinary measure imposed on the

complainant, she submitted, on 15 February 2008, a second protest specifically related to these various issues.

16. By a decision of 5 May 2008 the Director-General rejected this protest on the grounds that it was not only unfounded, but also irreceivable for a variety of reasons. One of these reasons was that the complainant had ceased to be a staff member of the Organization as from the termination of her appointment on 19 February 2007 and therefore no longer had *locus standi* to submit such a protest.

17. As she was unable to persuade the Appeals Board to review this decision, she challenged it directly before the Tribunal in her first complaint.

18. In her second complaint the complainant requested the convening of an oral hearing. In view of the abundant and very clear written submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

19. The complainant's request for joinder of the two complaints does not meet with any objection on the part of the Organization, which leaves this matter to the discretion of the Tribunal. These complaints, which contain some common claims and rest in part on the same arguments, are largely interdependent. The Tribunal therefore considers that they should be joined in order that they may form the subject of a single judgment.

20. The Tribunal first observes that there is no merit in the complainant's submission that she was wrongly denied access to the internal means of redress offered by the Organization when she submitted her protest of 15 February 2008. Staff Regulation 11.1, Staff Rule 111.1 and the Statutes of the Appeals Board in fact confine these means of redress to "staff members". As the Tribunal has recently had occasion to find with regard to the staff rules and regulations of another international organisation which uses the same terms, that the

reference to “staff members” should not be construed as encompassing former staff members (see Judgment 2840, under 18 to 21). In addition, contrary to the complainant’s submissions, the fact that the decision of 16 February 2007 terminating her appointment was itself the subject of a complaint did not make it any less binding. The complainant could not therefore have access to the internal appeal procedure in order to challenge a decision adopted after the date on which the termination of her appointment took effect. She is, however, entitled to file a complaint directly with the Tribunal, whose jurisdiction extends, under Article II, paragraph 6(a), of the Statute of the Tribunal, to any official, “even if his employment has ceased”.

21. In support of her claim concerning her non-promotion to grade P-3, which the Tribunal will examine first, the complainant essentially maintains that throughout her working life her professional abilities were favourably assessed and that she made a useful contribution to the workings of the Organization through certain personal initiatives and her membership of various working groups.

22. In this connection it will be recalled that, according to firm precedent, international civil servants do not have a right to promotion (see, for example, Judgments 1207, under 8, or 2006, under 12) and that decisions in this domain, which are taken at the discretion of the executive head of the organisation, are subject to only limited judicial review (see, for example, Judgments 1670, under 14, or 2221, under 9).

23. In the instant case it is true that the complainant’s performance was assessed quite favourably throughout her working life – leaving aside the considerations which led to the initiation of disciplinary proceedings against her. But this finding is hardly sufficient to convince the Tribunal that the refusal to promote the complainant to grade P-3 was due to a manifest error in the appraisal of her merits. Contrary to the complainant’s submissions, the decision not to grant her such promotion, which was not mandatory, did not in itself constitute a breach of Staff Rule 104.11 *bis*(a), according

to which “[p]erformance appraisal is fundamental to the career development of staff members”, particularly since the grade to which the complainant aspired was much higher than that which she held and was in the Professional category. In these circumstances, there is no merit in the complainant’s submission that this refusal to promote her constituted a hidden disciplinary measure, or that it stemmed from discrimination against her, or that it represented a breach by the Organization of the principle of good faith, of its duty of care towards its staff or of its obligation to treat them with dignity.

24. With regard to the moral and administrative harassment which she claims to have suffered, the complainant contends that she was the target of the personal animosity of the Director and acting Director of the Bureau of Human Resources Management. In her opinion they hatched a “plot” and mounted a “conspiracy” against her by “opportunistically exploiting [her] private financial difficulties and the creditors’ letters addressed to [her] employer”.

25. However, the submissions in the file clearly do not confirm the existence of such harassment, which must be proved by the person alleging it (see, for example, Judgments 2100, under 13, or 2370, under 9).

26. In this connection the complainant complains of the repetitive nature and threatening content of the succession of memoranda inviting her to pay her debts on pain of disciplinary action. In particular, she considers that the memorandum of 11 August 2006, which was sent to her home during her summer leave, was gratuitously offensive as it arrived only a few weeks after the previous warning sent to her on 13 July 2006. But the sole reason for the large number of memoranda was that the complainant had failed to put her affairs in order within the time limit set in each of them. The sequence of events described above shows that the memorandum of 11 August 2006 was sent because of the urgency created by the decision of the French Ministry of Foreign Affairs to extend the complainant’s special residence permit for France for only one month.

27. Similarly, the complainant's allegation that the staff members in question had encouraged her landlady to contact UNESCO and then to tell the Ministry of Foreign Affairs and the journalist who produced the above-mentioned television programme about her case, must be rejected. Firstly, the file shows that, on the contrary, the landlady herself apprised the Organization of her difficulties, to its great displeasure. Secondly, nothing confirms that the steps taken by this person were guided by the aforementioned staff members; indeed, what makes such a contention even less plausible is that it was plainly in the Organization's interest to give as little publicity to this affair as possible.

28. Neither the fact, which was by no means unusual, that the security officers at Headquarters were informed that the complainant was no longer authorised to enter the premises after her separation from UNESCO, nor the fact that the Organization's Medical Service – which the complainant does not say that she consulted for any particular reason – did not concern itself with her state of health until shortly before the termination of her appointment, amount to moral harassment of the complainant. Furthermore, although she complains that she did not receive the salary due to her for the period 1 to 18 February 2007, the submissions reveal that this delay in payment was due solely to the fact that she herself had failed to complete the separation formalities set out in paragraph C.1 of item 2905 of the UNESCO Administrative Manual, because she had not repaid the loans taken out with the Staff Savings and Loan Service.

29. Lastly, the Tribunal notes that the complainant never lodged a complaint of moral harassment, as she could have done in accordance with the provisions of Administrative Circular No. 2232 of 20 April 2005 entitled "Anti-harassment policy", during her entire period of service with UNESCO. It was not until disciplinary proceedings were initiated against her that she formulated such accusations against the staff members in charge of these proceedings, a circumstance which can only detract from the credibility of her allegations.

30. The complainant's arguments regarding the unlawful disclosure of personal information are equally devoid of merit. In this respect the complainant submits that since the mid 1990s and "increasingly and systematically" after 2004 the Organization divulged personal data concerning her to various third parties, including staff members of UNESCO, authorities representing her country of origin in France and members of her family. She also contends that the contents of confidential letters addressed to her were regularly revealed to third parties.

31. But once again it must be found that it is by no means established that these acts really occurred. There is nothing in the file to indicate that the Organization disclosed personal data regarding the complainant to unauthorised persons or that it divulged in any form whatsoever information contained in letters addressed to her.

32. More specifically with regard to the television programme of 27 October 2006, as noted above, it is hardly likely that the Organization would have encouraged such an initiative since media publicity of the affair could only tarnish its public image in the host State. Furthermore, the complainant herself says in her submissions that steps were taken to preserve her anonymity when this programme was broadcast.

33. Lastly, the complainant implies that information about her was circulated at the instigation of the French Ministry of Foreign Affairs, but the Tribunal clearly has no jurisdiction to deal with criticism of the political or administrative authorities of a State.

34. It is on those bases that the lawfulness of the termination of the complainant's appointment must now be examined.

35. In order to challenge this decision, the complainant first enters various pleas regarding the validity of the procedure followed.

36. She criticises the Director and acting Director of the Bureau of Human Resources Management for not interviewing her

before initiating the disciplinary proceedings. But, contrary to her submissions, the right to be heard, which every staff member possesses, does not encompass that of being interviewed by the staff members of one's choice and the authorities in question were under no obligation to hold such an interview, which the complainant does not even say that she sought at the time.

37. According to the complainant, the brief and evidence which she submitted to the Organization for the attention of the Joint Disciplinary Committee on 17 January 2007, in other words on the day on which the latter met, was not in fact considered by that body. This assertion is, however, plainly unfounded given that the Committee's report shows that its members did examine this evidence.

38. The complainant submits that the Joint Disciplinary Committee's deliberations were flawed because the Bureau of Human Resources Management was over-represented in them. She argues that three staff members of the Bureau took part in the meeting, whereas the Committee's Rules of Procedure make provision for only one representative of the Bureau to be present. First, it must be noted that one of the staff members in question attended the meeting not as a representative of the Bureau but as Secretary of the Committee, in accordance with paragraph 5 of the Committee's Rules of Procedure. Furthermore, while paragraph 6(a) of the Rules lists "a representative of the Bureau of Personnel" among the persons who may attend the Committee's meetings, this provision cannot be interpreted to mean that the Bureau may not be represented by more than one staff member. A converse interpretation would be too restrictive, because in practice it would hamper the efficiency of such a committee. Moreover, there would be very little reason for it, because the provision in question does not concern the actual membership of this joint body, but simply determines who may attend its meetings.

39. The complainant alleges that the acting Director of the Bureau of Human Resources Management made a statement during the Committee's meeting, although he is not among the representatives

of the Organization who are authorised to attend. But the Organization, without being effectively contradicted by the complainant, denies that any such statement was made and its existence therefore cannot be regarded as proven.

40. The complainant contends that during the proceedings the Organization unlawfully added some evidence to the file submitted to the Joint Disciplinary Committee. But in the instant case there was nothing to prevent the production of these documents since they might have provided more information for the Committee during its discussions and were also forwarded to the complainant.

41. She objects to the fact that she was not heard by the Joint Disciplinary Committee. The file shows, however, that this was her own doing, inasmuch as she was duly invited to attend the Committee's meeting and was even on the premises the day of the meeting, but voluntarily and deliberately chose to abstain from participation in the discussions. Although she tries to justify this attitude by saying that she had health problems, this argument will be discounted, since she could have designated a staff member to represent her and this meeting had already been postponed twice for reasons attributable to her.

42. Lastly, she submits that the right of defence was breached because she was not sent the Joint Disciplinary Committee's report and was thus deprived of this essential document when preparing her appeal to the Appeals Board. It is true that, in accordance with the procedure laid down in item 3005.15 of UNESCO's Administrative Manual, the Committee's report was transmitted only to the Director-General. The complainant is, however, right in holding that she was entitled to receive this report. The confidential status conferred on this report by Staff Rule 110.2(f) should not apply with respect to the staff member concerned (see, in this connection, Judgment 2229, under 3(b)). But, while the Organization could not lawfully refuse to forward this report to the complainant, it was not obliged to transmit it to her of its own accord, and in this case the complainant did not

actually request this document. It should also be noted that the complainant subsequently received the report in question during the proceedings before the Appeals Board, so that she was in fact able to acquaint herself with the contents of this document when preparing her submissions to that body.

43. The complainant also criticises the lawfulness of the disciplinary measure applied to her. In this regard, she first denies the substance of the charges against her or that they constituted serious misconduct.

44. While she does not deny the existence of her debts as such, she contends that she did not deliberately put herself in this situation, but that it is the result of recurrent financial difficulties and that the responsibility for paying the sums in question lies partly with her former husband who stood surety for her. But none of these circumstances alters the fact that the acts with which she is charged constitute serious misconduct, because it has in any case been established that the complainant engaged in conduct which was objectively incompatible with her professional obligations (see, for example, Judgments 1363, under 32, or 1960, under 6).

45. She then denies that the acts with which she is charged constituted, as the Director-General held, a breach of her duty to abide by the law and public policy of the host State. This plea is completely inapposite. By not paying the sums owed to creditors for more than ten years and not complying with several court rulings ordering her to meet her obligations, the complainant, an international civil servant, plainly did not show due respect for local laws and institutions and for the public policy of the host State, as this notion must be understood here.

46. Also, the complainant's contention that her conduct did not compromise UNESCO's reputation and image which, on the contrary, were bound to be tarnished by this attitude on the part of one of the Organization's staff members is of no avail. Indeed, the

above-mentioned *notes verbales* of the French Ministry of Foreign Affairs and media coverage of this case are indicative of the serious injury caused to UNESCO. Furthermore, the complainant's behaviour was likely to increase the reluctance already displayed by some landlords and estate agents in Paris to rent accommodation to staff members of the Organization on account of the lack of an effective remedy should they default on their rent payments.

47. With regard to the repeated breaches of the Standards of Conduct for the International Civil Service with which she was also charged, the complainant contends that the standards in question, which were drawn up by the International Civil Service Commission, were not published by UNESCO until 30 January 2007, in other words after the acts with which she is charged. She infers from this that these standards did not apply to her *ratione temporis* and that the Director-General, in taking disciplinary measures against her on the grounds that they had been breached, flouted the general principle whereby adverse provisions cannot apply retroactively. However, the impugned decision does not refer expressly to the standards published in 2007. Firstly, the fact is not disputed that an earlier text laying down such standards had been in force at UNESCO since 1954, and the complainant's argument that staff members were unfamiliar with it, even if it were true, would not deprive the text of its legal effect. Secondly, the reference in the impugned decision to the Standards of Conduct for the International Civil Service should really be construed as a general reference to all the professional and ethical obligations applicable to these civil servants owing to the requirements of their status, and not as a specific reference to a given text codifying these obligations.

48. The Director-General was therefore right in considering that the complainant had not complied with Staff Regulation 1.4, which states that “[m]embers of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants”. The complainant's conduct was blatantly inconsistent with these requirements and, as the Tribunal has already observed in several

similar cases, such breaches of private financial obligations on the part of international civil servants are incompatible with the rules of conduct by which they must abide (see, for example Judgments 53, under 7, 1480, under 3, or 1584, under 9).

49. The Director-General was also right to consider that the complainant had not honoured her obligations under Staff Regulations 1.8 and 1.9, regarding respectively the immunities and privileges of staff members of the Organization and the declaration signed by them on accepting their appointment. As far as the reference to Staff Regulation 1.8 is concerned, the complainant contends that she never formally relied on her immunity as a staff member of UNESCO in the proceedings to which she was party. However, the fact remains that she objectively took advantage of this immunity because it was impossible for her creditors to obtain the attachment of her salary from the Organization, or to use other coercive measures which would have been available to them had she been an ordinary debtor. Moreover, the fact that the memorandum of 22 September 2006 informing the complainant of the opening of disciplinary proceedings expressly mentioned only the breach of Staff Regulation 1.4, and not that of Staff Regulations 1.8 and 1.9, did not prevent the adoption of disciplinary measures in response to her failure to meet the requirements of these provisions as well. Indeed, the charges of which she was notified on that occasion encompassed in substance the breach of all the Staff Regulations in question and, in any case, the disciplinary authority was not obliged to accept that the acts described in this memorandum constituted the offences identified therein.

50. As for the issue of whether the measure of termination was appropriate having regard to the degree of seriousness of the acts in question, the complainant submits that such a measure was “unreasonable, disproportionate and inhumane”. It must be pointed out that, according to firm precedent, as recalled in particular in Judgments 207, 1984 and 2773, the disciplinary authority has a discretion to determine the severity of a disciplinary measure justified by a staff

member's misconduct, provided that the measure adopted is not manifestly out of proportion to the offence. It cannot be alleged that termination of the complainant's appointment, the disciplinary measure chosen, was manifestly out of proportion to the degree of seriousness of the acts listed above, notwithstanding the complainant's length of service with UNESCO and her recognised professional abilities. The Tribunal therefore considers that, in taking this decision, the Director-General did not exceed the limits of his discretionary authority.

51. Lastly, the complainant alleges misuse of authority with regard to the contested disciplinary measure. She first argues that the purpose of the disciplinary proceedings against her was to compel her to meet private obligations and that this did not *per se* have any bearing on the interests of the Organization. But this argument must be rejected, because honouring private obligations is, as has already been stated, an integral part of the duties that are inherent to the status of an international civil servant. The complainant further argues that the staff of the Bureau of Human Resources Management displayed "blatant personal prejudice" against her and that the disciplinary proceedings to which she was subjected formed part of the moral harassment of which she complains. However, for the reasons set forth in considerations 24 to 29 above, such harassment cannot be considered to have occurred, and there is nothing in the file to show that the staff members in question neglected their duty of objectivity in these proceedings.

52. Whilst the disputed disciplinary measure is not therefore tainted with any flaws, a question remains as to whether the possible errors mentioned in the Appeals Board's opinion were in fact committed by the Organization when handling the complainant's case, since she relies on the conclusions reached by the majority of the Board on this point.

53. The first of these errors was said to result from the fact that, in view of the potentially serious nature of the charges levied against senior management by the complainant, the Organization ought to have

held an inquiry to ascertain the truth of these charges before using its disciplinary authority against her. The Tribunal does not share that view. Since, as has already been said, the complainant did not submit a formal complaint of moral harassment on the basis of the Administrative Circular of 20 April 2005 already mentioned, the Organization was not obliged to conduct the investigations prescribed in such an eventuality. In these circumstances, although the Director-General certainly had the authority to order the opening of an inquiry into the merits of the complainant's accusations, he could lawfully forgo such action. The situation might possibly have been different had these accusations appeared, *prima facie*, to be well founded and corroborated by at least some evidence, but that was not the case here, as may be inferred from considerations 24 to 32 above. Thus, UNESCO did not commit any error in deciding not to hold the inquiry in question – which the complainant herself does not seem to have expressly requested.

54. The second criticism which the Appeals Board levels at the Organization is that it “missed the opportunity to suggest the implementation of the provisions of Staff Rule 103.19(g)” under which “[t]he Director-General may, as an exceptional measure and under such conditions as he may determine, authorize the cession by a staff member of part of the salary and emoluments due to him by the Organization”. But, while it could certainly have been proposed to the complainant to request, on the basis of this text, that some of her salary be ceded to her creditors, the Organization cannot be deemed to have acted unlawfully because it did not contemplate the implementation of this provision. Moreover, it is hard to see how the complainant could have benefited from recourse to that option, apart from securing protection against her own bad habits, since there was nothing to prevent her from discharging her debts to her creditors of her own accord by paying them out of her monthly salary. In fact, it seems highly improbable, bearing in mind the complainant's general conduct, that she would have consented to the introduction of such an arrangement.

55. The conclusion is that the impugned decisions are not unlawful in any way. The claims entered by the complainant in her two complaints must therefore be rejected in their entirety, without it being necessary for the Tribunal to rule on the various objections to receivability raised by the Organization. The Tribunal notes, however, that some of these claims, such as those asking the Tribunal to order UNESCO to present its apologies to the complainant, or to impose penalties on the Organization or some of its staff members, clearly lie outside its jurisdiction (see Judgments 1591, 2605 and 2811).

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 7 May 2010, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet