

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**R.**  
**v.**  
**IOM**

**123rd Session**

**Judgment No. 3726**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. R. against the International Organization for Migration (IOM) on 18 April 2014, the IOM's reply of 11 August, the complainant's rejoinder of 11 September and the IOM's surrejoinder of 18 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 dismiss her claim for compensation on account of labour exploitation and compulsory labour.

The complainant joined the IOM office in Chisinau, Moldova, in July 2009 under a special all-inclusive contract. She was subsequently offered a one-year fixed-term contract as Legal Assistant at grade G.5. Her contract was renewed three consecutive times until 30 September 2013.

By a letter of 29 June 2013 the complainant was informed of the non-renewal of her contract upon its expiry on 30 September 2013 due to "significant budgetary constraints". On 27 August she submitted a request for review, alleging that since 2010 she had been "overloaded with many responsibilities and tasks without having [her] grade increased and [her] salary raised accordingly". She had accepted those additional

tasks as, in her view, there was a “risk” of being “dismissed” if she refused. She claimed 129,600 United States dollars as remuneration for the additional tasks corresponding to those of a National Professional Officer at grade C she performed between 1 October 2010 and 30 September 2013, but which were not reflected in her 2010 Terms of Reference (TORs), plus 100,800 dollars representing the difference between the monthly salary of a National Professional Officer at grade C and the G.5 monthly salary already paid to her since, during the same period, she had to perform two new responsibilities that had been added in her 2010 TORs. She also claimed moral damages for labour exploitation and damage to her health in the amount of 40,000 dollars.

By a letter of 30 September 2013 the complainant was informed that her claims were rejected as unfounded. With respect to the arguments made regarding additional tasks allegedly performed, the Administration noted that she had already raised these arguments when she had contested the decision to modify her 2010 TORs in a previous request for review dated 25 January 2013. As she had not contested IOM’s reply of 25 February 2013, her claims in this respect were time-barred.

The complainant submitted an appeal to the Joint Administrative Review Board (JARB) on 25 October 2013. In its report the JARB considered that the points raised in her first request for review were not receivable, but decided to consider them on their merits to determine whether or not the treatment amounted to forced or compulsory labour. It concluded that the complainant had not proved that a real “menace of dismissal” existed, that the non-renewal of her contract was lawful and that her conditions of employment did not amount to forced labour. It hence recommended dismissing the appeal as unfounded. However, noting that the clause “Performing other related tasks” in her 2010 TORs was phrased in a vague manner which could be open to abuse, it made a general recommendation concerning the drafting of contracts and TORs, indicating that they should set clear parameters for a staff member’s engagement so as to avoid potential abuse.

By a letter of 29 January 2014 the complainant was informed that the Director General had decided to endorse the JARB’s conclusions. That is the impugned decision.

Before the Tribunal, the complainant presses the same claims as in her request for review dated 27 August 2013. She also claims costs.

IOM asks the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. The complainant raises a procedural issue concerning what she alleges was IOM's late delivery of its reply to her Action Prior to the Lodging of an Appeal (request for review). IOM points out that it received the complainant's Action Prior to the Lodging of an Appeal on 29 August 2013. IOM states that the 30-day deadline within which the complainant was to receive its reply was due to expire on Saturday 28 September 2013, but that, pursuant to the Tribunal's case law, as stated for example in Judgment 2831, consideration 3, the actual deadline was Monday 30 September 2013, when it was delivered by e-mail to the complainant who confirmed receipt of it on the same day. In response, the complainant states as follows in her rejoinder:

"I respectfully note that according to Annex D to the IOM Staff Rules [...] the IOM Moldova administration had to deliver to me their reply in original via post mail, given that we are in the middle of litigious procedures as per Annex D to the IOM Staff Rules, and not via email. Thus, even if it is considered that the deadline for their reply was 30 September 2013, (as suggested by the defendant organization), the IOM Moldova administration sent their reply in original only on 01 October 2013, which is considered delay, regardless of the prejudice suffered by me. I'd like to mention that the equity principle within proceedings was infringed by IOM in this case, because if I was the one in delay (even for one day), then my case would have been dismissed and I would have remained with no remedy whatsoever." (Complainant's emphasis.)

The complainant asks the Tribunal to take this into account procedurally and also "as a reflection of IOM administration's attitude towards [her]" acting in bad faith on many occasions. However, Article 4(v) of Annex D merely required the Head of Administration in the complainant's duty station to reply within 30 days of receiving the Action Prior to the Lodging of an Appeal. Leaving aside the fact that in this case the time limit expired on a Saturday (see Judgments 3566, considerations 3 and 4, and 2831, consideration 3), inasmuch as the norm makes no stipulation

as to the consequences of non-compliance with the time limit, this claim by the complainant is unfounded.

2. The complainant refers to the non-renewal of her appointment when it expired on 30 September 2013. However, she does not raise it as a claim but as a plea in support of her allegation of bad faith on the part of IOM. She had made this quite clear in her internal appeal, dated 25 October 2013, to the JARB when she states as follows:

“I note that in my request of 27 August 2013 **I did not challenge [the] decision of non-renewal of my employment contract**, but simply showed that that decision was subjective [...] as it is for the first time from the establishment of the Legal Assistant position within the IOM Moldova Mission [that] it remains uncovered financially [...] under the circumstances of an employment conflict between me and the IOM Moldova administration [...] but I see it as a modality of the IOM Moldova administration to hide the labour exploitation that I have been subjected to, with the purpose of getting rid of me, avoiding my remuneration for the compulsory labour that I have performed for the Mission and my promotion, avoiding a labour litigation which are **clear elements of mala fide of the IOM Moldova administration.**”  
(Complainant’s emphasis.)

3. Essentially, the complainant seeks an order that IOM compensate her because it violated her employment rights by exploiting her and subjecting her to forced or compulsory labour, contrary to Article 2(1) of the 1930 ILO Forced Labour Convention (No. 29), by imposing upon her tasks which went beyond her Terms of Reference (TORs) and her G.5 grade. However, in her rejoinder, she makes it clear that her claim is that she was subjected to “compulsory labour” contrary to the Convention. She states as follows:

“In [...] their reply the defendant organization misrepresents my claims from my appeal to the IOM JARB, as I have never claimed that I had been subjected to ‘forced labour’. [...] I claimed that I was subjected to labour exploitation and compulsory labour, which are distinct legal terms [...]”

4. The Tribunal has explained its purview when a party relies on the violation of a right under an ILO Convention as follows:

“The complainant contends that the ILO acted in breach of its own international instruments when it did not renew his contract. He specifically refers to ILO Convention No. 158 and Article 3.2(c) of ILO Recommendation

No. 166. [...] [T]hese instruments create obligations for Member States and do not apply to the relationships between the ILO and its officials. These latter relationships are governed by the terms of the contracts into which the person entered with the ILO and by the rules and regulations of the ILO, as interpreted and applied by the Tribunal's case law (see, for example, Judgment 2662, under 12)." (Judgment 3448, consideration 10.)

However, the prohibition on forced labour is not confined to the Forced Labour Convention. It is also one of the fundamental principles and rights at work, as recognized in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, which is accepted by all ILO Member States through their membership of the ILO. The Tribunal already considered in Judgment 1333, consideration 5, that:

"The law that the Tribunal applies in entertaining claims that are put to it includes not just the written rules of the defendant organisation but the general principles of law and basic human rights."

Accordingly, the complainant's claim for compensation on the ground that she was subjected to compulsory labour and labour exploitation will be considered.

5. The complainant refers to a number of international conventions. As indicated in the foregoing paragraph of this judgment, their terms are only enforceable between the States Parties, but the general principles enshrined therein may also apply to staff relations. The complainant refers, for example, to Article 8(3)(a) of the International Covenant on Civil and Political Rights, 1966, which states that "[n]o one shall be required to perform forced or compulsory labour". Importantly, she refers to the definition given in Article 2(1) of the 1930 ILO Forced Labour Convention, which states that "[f]or the purpose of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

It is observed that the meaning of forced labour and compulsory labour is the same. It is also observed that this provision provides two compendious requirements both of which the complainant must satisfy in order to prove that she was subjected to compulsory labour. She must prove that at the material time she worked under the menace of a penalty, and, in addition, she had not offered herself voluntarily to do that work.

6. The complainant contends that from 1 October 2010 to 30 September 2013 the IOM imposed five additional tasks upon her which required the competences of a National Professional Officer (NPO) at grade C according to the job classification standards established by the International Civil Service Commission (ICSC) created by the UN General Assembly and accepted by the IOM, while she was at the G.5 grade and paid as such. The complainant states that the resulting work overload of those tasks adversely affected her health.

7. Two new tasks were added to the complainant's TORs on the renewal of her one-year fixed-term contract of employment in October 2010 and on the subsequent renewals. Those new tasks were contained in clauses 1 and 7, which read as follows:

“1. Negotiation, drafting, reviewing and coordinating legal documents with Leg Dept at IOM HQ for the Mission (administrative and thematic), incl. contracts, MoUs, agreements as well as monitoring of their implementation.

7. Acting as an IOM Gender focal point for Moldova, nominal member of UN Human Rights Justice and Gender group as well as Government Working Groups on Human Rights and Gender.”

8. The other three additional tasks were assigned through the complainant's immediate supervisor purportedly on the basis of clause 11, which was also inserted in the TORs to her renewed contract for the period 1 October 2010 to 30 September 2011 and remained in her subsequent TORs. Clause 11 is a general purpose clause, which required the complainant to perform “other related tasks assigned in necessary cases by the IOM Moldova Chief of Mission or Project Management Coordinators”.

9. One of the three additional tasks required the complainant to coordinate a group of lawyers who were contracted by the IOM Moldova Office under its Prevention and Protection Department's (P&P) projects. These projects were managed by her direct supervisor to provide legal assistance and representation in court of justice for IOM beneficiaries. The complainant states that under this project, she was responsible for collecting and evaluating the lawyers' reports on individual cases on a monthly basis; for keeping track of individual cases and the progress

which lawyers made on them; for reporting to her direct supervisor on the activities of the lawyers and for preparing invoices and payments for each case in keeping with the relevant IOM rules. According to the complainant, “[t]his activity was quite meticulous and took a lot of time and efforts, and it required [her] professional qualifications as legal specialist (graduate of law faculty)”.

As to the second additional task, the complainant states that during the period October 2010 to September 2013 she was assigned the task of providing assistance in the IOM project “Preventing Corruption and Impunity in the Fight against Trafficking by Empowering the Media and Fostering Cooperation between Civil Society and Law Enforcement Agencies 2010-2013” (“GTiP 1 project”). The complainant explains that this was also a part of the P&P program and states that her tasks involved her in the coordination of this activity over the three-year period. She states that under this project she coordinated the activities of a group of experts contracted by IOM; participated in the elaboration and publication of the Study and the Guide, which were essential products of the GTiP 1 project; contributed ideas and inputs to these two publications; participated in reporting to the donor on the progress of the project; collected and compiled the information on the implementation of the project; drafted interim progress reports for the donor; coordinated the draft progress reports with relevant IOM departments, among other tasks.

As to the third additional task, the complainant states that she provided assistance in the IOM project “Strengthening prosecutorial capacities to investigate and prosecute human trafficking cases in Moldova (2010-2012)” (“GTiP 2 project”). She explains that under this project, during the period 1 October 2010 to 30 March 2013, she participated in the elaboration of the project proposal; coordinated project activities with the donor and other partners; participated in the elaboration of the TORs for the On-Site Advisor and for his legal assistant and participated in the selection process, among other things.

IOM does not controvert these statements.

10. The complainant contends that although she signed the renewed contracts and TORs without protesting or questioning the inclusion of clause 11 or the two new tasks, her consent was vitiated. She submits that when she signed them IOM did not inform her in writing of the ICSC's job classification system and the competences required and tasks which were to be performed by specified grades. She states that under that system, her G.5 grade required her to perform tasks that were logistical, technical and secretarial, while the tasks which the two new responsibilities imposed upon her required analytical skills, knowledge of human rights conventions, as well as of international and national gender and human rights laws. She further states that at that time she did not know that it was unlawful to assign to her those tasks, which involved responsibilities corresponding to the Professional category, and that the IOM Administration therefore imposed those tasks upon her by deception and fraud, which also vitiated her consent.

11. The Tribunal has stated as follows in Judgment 3350, consideration 2:

“Like private law contracts, the conclusion of a contract of employment of a public servant is based inter alia on the free exercise of consent. The overriding principle of good faith and the rule of *pacta sunt servanda* require each of the parties to adhere to the contract, provided it is not undermined by a lack of consent.”

The following was also stated in Judgment 856, consideration 3:

“There will ordinarily be [...] a flaw [by lack of consent] if the staff member underwent compelling outside pressure.”

12. The Tribunal considers that the complainant has provided no evidence which shows that she “underwent compelling outside pressure” at the material times, which would vitiate her consent. It is noted that IOM states that the TORs in the 2010 contract were modified to reflect certain changes in the complainant's responsibilities. According to IOM, among other things, the complainant's responsibility to translate project materials and documents was removed from her 2010 TORs and other responsibilities were merged and made more specific and the two new tasks were added. These are matters which fall within the purview of the

Administration, not within that of the Tribunal. Additionally, as has been stated, in Judgment 3135, consideration 14, for example, staff members of international organizations have a duty to acquaint themselves with the rules and regulations which apply to them and cannot rely on lack of knowledge of them. Moreover, there is no evidence on which to conclude that IOM obtained the complainant's consent to perform the subject tasks by deception, deceit or fraud. This ground of the complaint is therefore unfounded.

13. Additionally, the Tribunal does not consider that the general nature of clause 11 renders it illegal, as the complainant submits, but considers that the IOM Administration, with the knowledge of the ICSC job classification system, would have been aware that such a clause permits it to assign only such additional tasks and responsibilities to the complainant as were compatible with her G.5 grade.

14. The complainant contends that the three additional tasks, which were assigned to her, purportedly under clause 11, constituted compulsory labour because they were exacted from her under the menace of a penalty, and for which she did not offer herself voluntarily. She submits that she could not refuse to do them because of a risk that she would have been dismissed pursuant to IOM Staff Regulation 9.4(b)(iv) for unsatisfactory performance. This, she states, would have left her without any source of income and she was vulnerable as she could not have been without the job given her medical condition, which required regular medical examinations and tests after surgery that she had in 2006. The Tribunal considers this ground of the complaint to be unfounded as neither these submissions nor the evidence shows that the three additional tasks or even the two new ones and their related responsibilities were exacted from her under the menace of a penalty.

15. As to the claim of labour exploitation, the parties seem to agree that this term encompasses different forms of exploitative labour including forced and compulsory labour. The Tribunal considers this ground of the complaint to be also unfounded as it is not proved on the complainant's submissions or the evidence.

16. It is however clear that, under the five subject tasks that were assigned to the complainant, she performed duties which were outside and above the logistical, technical and secretarial tasks and responsibilities of her G.5 grade under the ICSC job classification system.

17. The complainant provides extracts from the UN careers home page to support her submission that under the ICSC job classification, the competences and concomitant tasks which her G.5 grade required her to perform were technical, logistical and secretarial, while the NPOs hold professional posts which require analytical skills and competences, specialized knowledge and qualifications and involve decision making. One extract relevantly states as follows:

“National Professional Officers are normally locally recruited and perform functions at the professional level. The qualifications for the [NPOs] are the same as for the Professional category and require as a minimum a first-level university degree. Jobs for [NPOs] can only be found in non-headquarters duty stations. [NPOs] are nationals of the country in which they are serving and their functions must have a national context. [...] Examples of these positions include human rights officers, [and] legal officers [...].”

18. Another extract explains the educational qualification which is required for the Professional and higher categories within the UN system, and by extension within IOM. It states:

“Normally, it is required that you have an advanced University degree [...] It is, however, frequently accepted that if you have a first-level university degree, combined with qualifying work experience, you meet the educational requirements.”

The same extract explains the nature of the work in the Professional and higher categories as follows:

“Typically, these positions require judgment in analysing and evaluating problems as well as in decision-making involving discretionary choices between alternative courses of action. They also require the understanding of an organized body of theoretical knowledge at a level equivalent to that represented by a university degree. While this knowledge is customarily and characteristically acquired through formal education, it may, in some fields of learning or specialized disciplines, be acquired through other training, self-study, or practical experience.”

19. IOM has not disputed that the five subject tasks that were assigned to the complainant occasioned her to perform duties and responsibilities which were above her G.5 grade. An international organization is required to respect the grading structure and grades of its staff members. The following was accordingly stated in Judgment 808, consideration 22:

“In sum the Director-General may assign the staff as the Organisation’s interests require provided he respects their grades and the grading structure. Transfer does not depend on their consent and they must be willing to put their hand to any work that suits their grade, their qualifications and the terms of their appointment.”

20. The complainant seems to invite the Tribunal to reclassify her post in relation to her performance of the subject tasks, but the Tribunal has no authority to do so (see Judgment 3284, consideration 12). Nevertheless, it can grant damages if it is not disputed that the complainant performed work beyond her current grade (see, for example, Judgment 3284, considerations 14 and 17). The Tribunal therefore determines that the complainant is entitled to material damages for the tasks that she performed above her G.5 grade, and that she is entitled to moral damages for the prejudice that she suffered by IOM’s breach.

21. The Tribunal notes that the complainant was in that situation for three years. Accordingly, the complainant will be awarded 50,000 United States dollars in material damages; 10,000 dollars in moral damages, and, additionally, 1,000 dollars in costs.

#### DECISION

For the above reasons,

1. IOM shall pay the complainant 50,000 United States dollars in material damages.
2. IOM shall pay the complainant 10,000 United States dollars in moral damages.

3. IOM shall pay the complainant 1,000 United States dollars in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 4 November 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

FATOUMATA DIAKITÉ

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