

**112th Session**

**Judgment No. 3094**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mrs K. J.L. against the World Health Organization (WHO) on 22 March 2010, her seventh complaint filed on 9 April, her eighth complaint filed on 15 April, her ninth complaint filed on 20 April and corrected on 4 May, her eleventh complaint filed on 9 June and corrected on 19 June, her twelfth and thirteenth complaints filed on 21 July, her fifteenth complaint filed on 29 July, her sixteenth complaint filed on 9 August and her seventeenth complaint filed on 26 August, WHO's single reply of 12 October 2010 to her sixth through eleventh complaints, and its single reply of 15 February 2011 to her twelfth through seventeenth complaints, the complainant's rejoinder to her sixth complaint of 15 November 2010, her letter of 11 November 2010 informing the Registrar of the Tribunal that she did not wish to file a rejoinder on her seventh, eighth, ninth and eleventh complaints, her letter of 6 March 2011 informing the Registrar that she did not wish to file a rejoinder on her twelfth, thirteenth, fifteenth, sixteenth and seventeenth complaints, and the Organization's surrejoinder to her sixth complaint dated 15 February 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. Facts relevant to this case are given in Judgments 2839 and 2895 on the complainant's first and second complaints, delivered on 8 July 2009 and 3 February 2010 respectively. During the internal appeal proceedings leading to Judgment 2839, the complainant submitted to the Headquarters Board of Appeal (HBA), as an attachment to her rejoinder, a note she had written to the Director of Administration and Finance in the Organization's Regional Office for Europe (EURO) in February 2005. This note contained an account of an inquiry she had conducted at the Director's request in January 2005, while she was Acting Human Resources Manager, which was aimed at identifying the sources of rumours concerning him. Three staff members identified in the note were invited by WHO to comment on its content and their statements were attached as annexes to the Organization's surrejoinder to the HBA. In a letter of 25 November 2006 the complainant objected to WHO's submission of these "irrelevant" and "defamatory" statements, and to the fact that her note, which she had submitted to the HBA in the "strictest confidentiality", had been shared with "third parties", and she requested the withdrawal of the statements. Mr N., as acting Director of Human Resources Services, responded to this request by stating that the complainant's objection should not be taken into account, since it had been submitted after the written proceedings had been closed, but that in any event "the Administration stands by both its Statement and Surrejoinder (including all Annexes) as submitted, in their entirety".

In Judgment 2839, the Tribunal ruled that the complainant was entitled to have the harassment allegations that were raised in her internal appeal considered by the Grievance Panel if she so wished. In October 2009 the complainant submitted complaints of harassment to the Panel against a number of staff members, including Mr N., since she regarded his statement quoted above as an act of harassment. The

Panel concluded that there was no evidence of harassment by Mr N. and on that basis the Director-General decided on 11 January 2010 to close the case against him. The complainant impugns that decision in her sixth complaint.

In her additional submissions on her first complaint to the Tribunal, the complainant alleged that several e-mails sent by her to colleagues, which the Organization had produced as annexes to its surrejoinder, were forgeries. In order to establish that there had been no forgery, WHO asked a member of its Information Technology and Telecommunications services, Mr M., to review these allegations. Mr M.'s report, which confirmed that the e-mails at issue were authentic, was submitted to the Tribunal as an annex to the Organization's final comments in that complaint. As a result, he too was named by the complainant as an alleged harasser in her submissions to the Grievance Panel following the delivery of Judgment 2839, as were Mr H., Mr M.'s supervisor, and Ms M.-S., WHO's legal officer, for their respective roles in the production of the allegedly forged documents. The Panel took the view that it was not the appropriate body to examine the allegations of "forgery/identity theft" raised against these three officials, and in December 2009 it therefore recommended that they should be investigated by the Internal Oversight Services (IOS). The Director-General then informed the complainant, by individual decisions dated 11 and 12 January 2010, that she had decided that the alleged incidents involving Mr M., Mr H. and Ms M.-S. did not constitute harassment and that the case was therefore closed as far as the allegations of harassment were concerned, but that she would nevertheless arrange for an independent investigation to be conducted into the authenticity of the contested documents by IOS, with the assistance of an external consulting firm. In her seventh, eighth and ninth complaints the complainant challenges those individual decisions insofar as they dismissed her allegations of harassment.

On 24 March 2010 the complainant enquired as to what progress had been made with respect to the independent investigation. Two days later she was told that the investigation was under way and was

expected to continue into April. At the end of April she was informed that, although there had been some delays, the investigation would resume at the beginning of May. The complainant filed her eleventh complaint on 9 June 2010, impugning what she describes as the implied decision not to endorse the Grievance Panel's recommendation of an investigation.

In addition to the above-mentioned e-mails, the annexes to WHO's surrejoinder on the complainant's first complaint included an e-mail from Ms E. to the legal officer. As Ms E. had been mentioned in the complainant's rejoinder, the legal officer had asked her to comment on the passages concerning her. Ms E., who gave a different version of the events described by the complainant, was also the subject of a complaint of harassment lodged with the Grievance Panel in October 2009. The Panel concluded that there was no evidence of harassment by Ms E. and the Director-General therefore decided on 26 April 2010 to close the case against her. The complainant impugns that decision in her twelfth complaint.

Another staff member mentioned by the complainant in her submissions to the Grievance Panel was Dr M., a senior WHO staff member who coordinated the Administration's reply to the complainant's internal appeal before the HBA. Dr M. was accused of having harassed the complainant by disclosing the latter's note of February 2005 to the staff members named in it and submitting their statements to the HBA. In its report the Panel concluded that there was no evidence of harassment by Dr M. and the Director-General decided on 26 April 2010 to close the case against her. The complainant impugns that decision in her thirteenth complaint.

In her submissions to the Grievance Panel the complainant also alleged that, following the announcement of her engagement to the Director of Administration and Finance, she was harassed by Mr V. and Mr J. in their capacity as Vice-President and President of the EURO Staff Association, respectively. Her allegations were based, in particular, on their requests to the Regional Director concerning the potential conflict of interest arising from her marriage to the Director of Administration and Finance and compliance with Staff

Rule 410.3.2.1, according to which the spouse of a staff member shall not be assigned to serve in a position in the same unit, or to a position that is superior or subordinate in the line of authority to the position occupied by the staff member to whom he or she is related. The Grievance Panel found these allegations to be unfounded and the Director-General therefore dismissed them by a decision of 26 April 2010. That is the impugned decision in the complainant's fifteenth complaint, as it relates to Mr V., and in her sixteenth complaint, as it relates to Mr J.

IOS issued its investigation report on 24 June 2010, concluding that there was no evidence of "forgery/identity theft" as alleged by the complainant. In light of this finding, the Director-General notified the complainant, by a letter of 30 June 2010, that she considered her allegations on this matter to be unfounded. That is the impugned decision in the complainant's seventeenth complaint.

B. The complainant contends, in her sixth complaint, that by endorsing three "defamatory" statements, and by allowing their submission to the HBA, particularly at a stage when she could no longer reply, Mr N. committed an act of harassment as defined in WHO Policy on Harassment. She argues that the sole purpose of producing and endorsing these statements was to "damage [her] credibility" and to retaliate against her because she had dared to lodge an appeal. In her view, the fact that Mr N. refused to withdraw them, even though they were irrelevant to her appeal and contained serious accusations of misconduct against which she could not defend herself, is evidence that his acts were motivated by ill will. In addition, she contends that having concluded that her complaint against Mr N. did not involve harassment and that there was no evidence to corroborate it, the Grievance Panel then issued a flawed recommendation.

The complainant considers that the Director-General's decision of 11 January 2010 is flawed and she asks that it be set aside. She also seeks an investigation, damages and other relief.

In her seventh, eighth and ninth complaints the complainant submits that she was harassed by Mr M., Mr H. and Ms M.-S., through

their respective roles in the production of forged documents. She argues that Mr M. harassed her by submitting a statement in which he certified that the contested documents – several e-mails allegedly sent by her – were genuine and by submitting other such falsified documents. Mr H. harassed her by endorsing Mr M.’s report and declaring the e-mails to be genuine. As for Ms M.-S., who relied on the contested documents in defending the Organization before the Tribunal, she either ordered their forgery or forged them herself – in any case she knew they were forged – thereby also committing acts of harassment. The complainant also accuses Ms M.-S. of inappropriately using confidential medical information concerning her in order to discredit her claim for service-incurred illness. According to the complainant, WHO failed in its duty to conduct an independent investigation into her allegations of forgery by refusing, inter alia, to grant her access to WHO’s official attendance records and by allowing the Director-General repeatedly to interfere in the work of the Grievance Panel. She submits that the Director-General abused her power by instructing the Panel how to interpret Judgment 2839 and by seeking to limit the investigation to allegations made in the internal appeal. She adds that the Director-General’s decisions to reject her claims of harassment are also flawed because they were taken before the Panel had completed its investigation.

In her seventh and eighth complaints she asks the Tribunal to set aside the Director-General’s decision of 12 January 2010 and to order WHO to conduct an investigation into her allegations of forgery, the results of which are to be communicated to the Grievance Panel in order that it may resume its examination of the related allegations of harassment. If the results of the investigation show that the documents in question were indeed forged, she asks the Tribunal to declare her resignation “moot” and to order her administrative reinstatement effective 1 January 2007. She also claims damages and costs.

In her ninth complaint she asks the Tribunal to set aside the Director-General’s decision of 11 January 2010 and to recognise that the actions of Ms M.-S. constitute harassment. She again seeks reinstatement and claims damages and costs.

In her eleventh complaint, she contends that the Director-General's implied decision not to endorse the Grievance Panel's recommendation that an independent investigation should be conducted into her allegations of forgery was legally flawed and prompted by bad faith. She submits that the Director-General had an obligation to give reasons for not carrying out an independent and transparent investigation, as recommended by the Panel. The forgery was obvious and could have easily been detected by WHO, since the e-mail addresses used for several staff members are those from 2009, whereas the e-mails are supposed to have been sent in 2005. This, in her view, is evidence of the Organization's bad faith. She also invokes a breach of her due process rights, *inter alia* on the grounds that WHO deliberately failed to keep her informed of the status of the investigation over a four-month period.

She seeks an investigation, information as to the identity of those involved in the alleged forgery, action against those persons in line with WHO Fraud Prevention Policy, recognition of the fact that she resigned under duress, retroactive reinstatement pending a lawful separation process and damages under various heads.

In her twelfth complaint, the complainant asserts that Ms E.'s e-mail to the legal officer contained three false statements, the submission of which she regards as an act of harassment. In her view, Ms E. deliberately made false statements, including accusations of abuse of power, in order to discredit her. The complainant points to the inconsistency between Ms E.'s statement before the Tribunal and that before the Grievance Panel as evidence that Ms E.'s version of events is false.

She seeks the setting aside of the impugned decision, disclosure of the witness statements submitted to the Grievance Panel, damages and costs.

In her thirteenth complaint the complainant argues that Dr M. harassed her by disclosing her note of February 2005, which was confidential, to the three staff members named therein, and by submitting the staff members' statements to the HBA, even though she

knew them to be false. The complainant further submits that Dr M. had a duty to ascertain the veracity of such accusations before “endorsing them”. She contends that Dr M. prevented her from defending herself, by introducing the three statements at the surrejoinder level, when no further response was possible. In her view, Dr M.’s written response to the Grievance Panel illustrates the accusations and threats levelled at her in retaliation for her having filed the harassment complaint.

She asks the Tribunal to set aside the impugned decision, to order WHO to produce various documents and to award her damages and costs.

In her fifteenth and sixteenth complaints against Mr V. and Mr J., respectively, the complainant argues that, as Vice-President and President of the EURO Staff Association, they participated in a “vendetta” against her, by using her forthcoming marriage to the Director of Administration and Finance as a means of trying to remove her from her post. She contends *inter alia* that they damaged her reputation by circulating to the staff at large concerns about potential conflicts of interest arising from the marriage and that, through the use of tactics such as refusing to participate in meetings with the EURO Administration, they pressured the Regional Director into reassigning her.

She asks the Tribunal to set aside the Director-General’s decision of 26 April 2010 and to order WHO to conduct an investigation, to disclose various documents and to issue an official communication, addressed to the Staff Committee and copied to all staff, confirming that Staff Rules 410.2.1, 410.2.2 and 401.3.2 were not applicable to her. She also seeks an official communication regarding WHO’s definition of a conflict of interest. Lastly, she claims damages and costs.

In her seventeenth complaint, the complainant contends that the investigation conducted by IOS, and, by extension, the impugned decision based on the IOS report, are vitiated by a lack of due process and other “factual and technical flaws”. She criticises the investigation process by stating that anonymous investigators chosen by WHO

gathered evidence without her being present, and that she was never given an opportunity to verify the accuracy of their findings.

She asks that the impugned decision be set aside and that an investigation by an independent expert nominated by the Tribunal be conducted, as well as claiming damages, costs, and other relief.

The complainant more generally argues that the Grievance Panel failed in its duty to investigate her allegations of harassment and conducted a process that was severely flawed. In particular, she alleges that the Panel failed to verify the information provided by witnesses and failed to take certain documents into account. She maintains that it violated its duty of impartiality by ignoring all of the evidence, except for the views expressed by one witness. Moreover, in her view, the fact that one of the alleged harassers was interviewed by the Panel as a witness in the context of another of her harassment complaints constitutes a violation of her due process right.

C. In its replies WHO submits that the sixth, seventh, eighth, ninth, eleventh, twelfth, thirteenth, fifteenth and sixteenth complaints are manifestly irreceivable and entirely devoid of merit. It argues that the complainant's allegations of harassment against Mr N., Mr M., Mr H., Ms M.-S., Ms E., Dr M., Mr V. and Mr J. could not be referred to the Grievance Panel pursuant to Judgment 2839, because they were not raised in the internal appeal leading to that judgment. Insofar as they were not submitted within the prescribed time limits pursuant to that judgment, they are also time-barred. Further, even if the complainant had filed her allegations of harassment within the stipulated time limit, the Grievance Panel is not the appropriate forum to consider whether the provision of statements to the HBA was procedurally acceptable, neither is it competent to determine whether the documents submitted by the Organization in the context of her first complaint constitute admissible evidence, as these matters were for the relevant appeal bodies to decide, namely the HBA and, ultimately, the Tribunal.

The defendant considers that the eleventh complaint constitutes an abuse of process. When she filed that complaint, the complainant knew that there had been an express decision by the Director-General to

conduct an independent investigation, and that the investigation was under way. That complaint, which is directed against the “implied decision” not to conduct an investigation, is therefore entirely unnecessary and vexatious, and WHO asks that costs be awarded against the complainant for that reason. In considering the award of costs, it asks that the complainant’s baseless attacks against the Director-General be taken into account. The Organization also stresses that most of the relief claimed in this case lies outside the Tribunal’s competence.

WHO points out that its Policy on Harassment applies to staff members and “former staff who allege that their separation was due to harassment”. However, the acts of harassment alleged in the sixth through ninth complaints are not related to the complainant’s separation from WHO and she therefore had no standing to bring these allegations before the Grievance Panel.

Similarly, the events on which the complainant relies in her twelfth through thirteenth complaints occurred long after she had separated from service. It follows that they do not involve any non-observance of her terms of appointment or of the Staff Regulations and she therefore has no standing before the Tribunal.

Regarding the seventeenth complaint, WHO also contends that she has no cause of action, as the Organization has already conducted the investigation that she requested and has communicated the results to her.

In WHO’s view, the sixth through ninth, twelfth, thirteenth, fifteenth, sixteenth and seventeenth complaints are barred by the principle of *res judicata*. In Judgment 2839, under point 5 of its decision, the Tribunal ruled that “[w]ithout prejudice to the complainant’s right to pursue claims with respect to service-incurred illness, to her separation date, to the exit medical examination and to the interruption of her sick leave, all other claims are dismissed”. In so ruling, the Tribunal dismissed the complainant’s claims concerning the annexes to the Organization’s surrejoinder in proceedings before the HBA, her

claims concerning the authenticity of the documents at issue, as well as her claims concerning her alleged illegal removal from her post, which the complainant is now seeking to reopen by characterising the same facts as harassment.

On the merits, the defendant submits that the acts of harassment alleged in the sixth through ninth complaints as well as those alleged in the twelfth, thirteenth, fifteenth and sixteenth complaints, have no factual or legal basis and do not even fall within the definition of harassment, nor has the complainant succeeded in proving harassment. Referring to the Tribunal's case law, according to which "allegations of harassment must be supported by specific facts" and "it is up to the person alleging that he or she has suffered harassment to prove the facts", it argues that the complainant has not discharged the burden of proof and that there is absolutely no evidence that the staff members concerned were motivated by bad faith, malice or abuse of authority. Moreover, the characterisation of these acts as harassment does not find any support in the case law.

The acts allegedly constituting harassment occurred in the context of an internal appeal, in the context of proceedings before the Tribunal, or in the context of action taken by elected staff representatives with respect to a possible conflict of interest involving the complainant and her partner. In all these cases the staff members concerned are being accused of harassment for acts carried out without bias or malice and as part of their official functions, which they should be able to perform without fear that their performance will give rise to allegations of harassment. WHO submits that the staff members accused in the twelfth, thirteenth, fifteenth and sixteenth complaints acted in good faith. With regard to the staff members accused on the basis of their statements, it notes that, even if the statements in question were untrue or defamatory, statements made in legal proceedings are privileged and cannot, therefore, be subject to legal proceedings.

The Organization denies that there is any inconsistency in the statements made by Ms E. It notes that it is the complainant herself who has provided contradictory information and maintains that there is

no evidence that Ms E. has made false statements. As regards the thirteenth complaint, WHO states that in disclosing the complainant's note to the staff members named therein and in submitting their responses to the Administration, Dr M. acted for an entirely proper purpose, namely to respond to and comment on a piece of evidence that the complainant herself had submitted to the HBA. It was for the HBA to assess the relevance and accuracy of these documents.

With respect to the fifteenth and sixteenth complaints, WHO argues that the written exchanges between the EURO Staff Association and the Administration, which the complainant provides as evidence of harassment, clearly show that there was a genuine concern among the members of the Staff Association about a potential conflict of interest arising from the complainant's marriage. The Staff Association therefore had a legitimate interest in determining whether the marriage might constitute a breach of Staff Rule 410.3.2.1.

WHO maintains that the Grievance Panel carried out its work in good faith and in accordance with its mandate. It investigated the complainant's allegations thoroughly, objectively and in a timely manner. The Panel considered all the evidence carefully and observed due process, including by giving the complainant a full and fair opportunity to make her case and by giving the alleged harassers an opportunity to reply. The complainant's arguments regarding an alleged lack of due process are misconceived. She was not the subject of the investigation but rather the informant and, as such, she had no right to dictate the scope and terms of the investigation, or the manner in which it should be conducted, nor was she entitled to be present while evidence was gathered or witnesses interviewed.

D. In the rejoinder to her sixth complaint the complainant presses her pleas. Referring to the Tribunal's case law, she asserts that the submission of defamatory statements to persons who did not have a legitimate interest in obtaining that information, namely the members of the HBA, is a sufficient basis for inferring malice on the part of

Mr N. She stresses that an experienced official such as Mr N. cannot be said to be fulfilling his official duties by endorsing defamatory statements. She adds that the investigation by the Grievance Panel following the delivery of Judgment 2839 was biased, as illustrated by its decision to issue a formal reprimand to her, which was endorsed by the Director-General.

E. In its surrejoinder to the complainant's sixth complaint WHO maintains its position in full. It reiterates that Judgment 2839 does not provide a basis for the introduction of new allegations of harassment that were not raised before the HBA in the proceedings leading to that judgment, and stresses that the complainant's attempt to apply the Organization's Policy on Harassment against Mr N., with whom she had no contact at the relevant time, let alone any workplace conflict, is a clear misuse of the Policy. WHO emphasises that, contrary to her allegations, neither the Grievance Panel nor the Director-General reprimanded her.

## CONSIDERATIONS

1. With the exception of the eleventh and seventeenth complaints, the present complaints are directed at decisions having essentially the same purpose, arising from essentially the same material facts and raising common legal issues. The Tribunal therefore considers that they should be joined in order that they may be ruled on in a single judgment. Moreover, as the eleventh and seventeenth complaints arise from the seventh, eighth and ninth complaints, the Tribunal considers that they should be ruled on in the same judgment as the other complaints.

2. These complaints stem from events that took place in the Organization's Regional Office for Europe (EURO) in 2005. As these events have already been the subject of litigation, the background facts can be found in Judgments 2839 and 2895. As a former WHO staff member, the complainant does not have access to the internal appeals

process. Accordingly, she filed these complaints directly with the Tribunal.

3. As provided in Judgment 2839, on 14 July 2009 the complainant requested the Director-General to refer harassment allegations made against a number of individuals to the Grievance Panel. The Director-General made the referral on 28 August 2009.

4. Ultimately, the Director-General rendered decisions on 11 and 12 January 2010, 26 April 2010 and 30 June 2010, which the complainant now impugns. In her decisions of 11 and 12 January and 26 April the Director-General concluded that the alleged actions did not constitute harassment and closed the cases. The Director-General observed that it was questionable whether some of the complainant's claims were properly before the Grievance Panel, since they had not been raised in the internal appeal leading to Judgment 2839.

5. In the seventh, eighth and ninth complaints, notwithstanding her decisions to close these three cases, the Director-General stated that she was arranging for an independent investigation into the authenticity of certain documents.

6. WHO submits that Judgment 2839 did not authorise the complainant to pursue harassment allegations against the individuals identified in these complaints. Relying on the language in the judgment, the defendant argues that the Tribunal "did not authorize the complainant to compile new allegations of harassment against a fluctuating group of alleged harassers, regarding events that she claims occurred well after September 2005".

7. The complainant asserts that nothing in Judgment 2839 restricts the scope of the Grievance Panel's review to the allegations already contained in her internal appeal. She maintains that the circumstances of her protracted disputes with WHO weigh in favour of a generous reading of consideration 10 in the judgment. Grievance

Panel reviews, the complainant argues, normally put an end to harassment. However, in this case, the HBA's failure to refer her harassment allegations to the Panel prevented the latter body from fulfilling that function. This allowed the harassment in her case to continue for years beyond the point at which it would have ceased had the referral occurred when it should have. The complainant takes the position that the Grievance Panel's investigation should be allowed to cover each of the acts of harassment mentioned in her formal request of October 2009, even though some of them date from the period after she filed her internal appeal on 11 November 2005 or from the period following her separation from service.

8. The considerations relevant to this discussion in Judgment 2839 are 9 and 10. They read:

"9. In her statement of appeal of 11 November 2005 the complainant specifically referred to and detailed the conduct that she alleged constituted a breach of the Organization's policy on harassment.

Upon receipt of these allegations of harassment, the Headquarters Board of Appeal was obliged to refer that aspect of the appeal to the Grievance Panel. The fact that the complainant did not take issue with the Board's failure to make the referral until sometime later, did not absolve the latter of its obligation to make the referral and to hold the appeal in abeyance.

The failure to make the mandatory referral constitutes an error of law for which the complainant is entitled to an award of moral damages. As the Director-General's decision was based on a fundamentally flawed process involving an error of law, it must be set aside. In these circumstances it is not necessary to consider the additional matters the complainant raised in relation to the proceedings before the Board as they would not add to the relief to be granted.

10. Having regard to the nature and complexity of the allegations, the fact that information relevant to the allegations emerged over a lengthy period of time, and also the fact that as the complainant's allegations have never been properly investigated and assessed, some of the alleged perpetrators have never had an opportunity to reply, this is not an appropriate case for the Tribunal to make an assessment on the harassment allegations. However, the allegations were raised by the complainant in her internal appeal and she is entitled to have them considered by the Grievance Panel if she so wishes."

9. In the decision itself, under point 3, it is stated:

“If requested by the complainant, the Director-General shall refer the allegations of harassment to the Grievance Panel in accordance with consideration 10.”

10. The Tribunal notes that the complainant is, in effect, reading point 3 of the decision in Judgment 2839 as though it states that the Director-General shall refer any allegations of harassment to the Grievance Panel. However, considerations 9 and 10 are not ambiguous. The subject of the referral obligation imposed by point 3 of the decision and consideration 10 is clear: it is the conduct “specifically referred to and detailed” in the complainant’s internal appeal and alleged in that appeal to constitute “a breach of the Organization’s policy on harassment”.

11. The complainant’s statement in her internal appeal raised allegations of harassment. WHO Policy on Harassment required the Headquarters Board of Appeal (HBA) to refer the allegations to the Grievance Panel. The HBA failed to do so and the then Director-General endorsed that failure by adopting its recommendations in her final decision. To remedy the error, the Tribunal awarded the complainant moral damages and, more importantly in the context of the present complaints, instructed the Director-General to make the referrals if the complainant so requested.

12. The complainant also argues that the Director-General acted inconsistently with the Administration’s view of the judgment by rendering decisions on the merits. In this regard, it must first be noted that the issue of the scope of the Grievance Panel’s review was specifically raised in the referral to the Grievance Panel of 28 August 2009. As to the Director-General’s decisions, it does not necessarily follow from the fact that the Director-General made decisions on the merits of the harassment allegations, that she considered them to be receivable. In fact, she indicated her concerns regarding the possible irreceivability of the new harassment allegations in her decisions. On the basis of these considerations, the Tribunal concludes that the

sixth, seventh, eighth, ninth, twelfth, thirteenth, fifteenth and sixteenth complaints are irreceivable and will be dismissed.

13. The eleventh complaint stems from the seventh, eighth and ninth complaints. By decisions of 11 and 12 January 2010 the Director-General dismissed the complainant's harassment allegations against three staff members. The Director-General also adopted the Grievance Panel's recommendation and "arrang[ed] for an independent investigation concerning the authenticity of the documents specified in [the complainant's harassment] complaint[s]". The complainant alleges that the Director-General later implicitly rescinded this decision by taking no action to implement it.

14. The complainant frames her eleventh complaint in the following terms:

"This is a Complaint against the implied decision by the Director-General of WHO not to endorse the recommendation by the Grievance Panel dated 3 December 2009 for the initiation of an independent investigation into alleged fraud (forgery and identity theft in documents submitted to the Tribunal in the context of [her complaint leading to Judgment 2839])."

Between March and April 2010, the complainant and the Administration engaged in a series of e-mail exchanges regarding the fraud investigation. The following is a summary of the exchanges:

- On 26 February 2010 the Director of Human Resources Management informed the complainant that steps were being taken to identify a suitable independent investigator to handle the case.
- On 4 March the complainant wrote to him, expressing her concern at the delay in the process and stating her opinion that "it should not [...] be difficult to identify a competent party to undertake the investigation".
- On 8 March the Director responded, reiterating the contents of the e-mail of 26 February and advising her that "[t]he [investigation was] being coordinated through IOS" and that "arrangements [were] being finalized with an external firm".

- On 14 March the complainant wrote to him again to enquire whether a firm had been retained to investigate the matter. She also advised him that, as the victim of the alleged fraud, she should be allowed to speak with the investigators.
- The following day, the Director stated that IOS was coordinating the investigation and that the complainant should expect to be contacted by IOS, or the independent investigators, if the investigation required information from her. She also informed the complainant that a person reporting allegations of misconduct does not have a right to participate in the investigation except as requested by the investigators.
- On 17 March the complainant responded to him, again raising concerns about the delay in retaining an independent investigator.
- The complainant wrote once more, to the same effect, on 24 March.
- On 26 March the Director replied that “the preliminary phase of the investigation” was in progress, and that “it [was] expected that the work [would] continue into April”. She added that “[a]s advised by IOS, per its normal procedures, updates on the progress of the investigation will not be provided”.
- On 28 April the complainant complained to the Director that no evidence had yet been presented “of any independent investigation through IOS”, and stated that the Administration’s conclusion regarding her entitlement to information about the investigation was mistaken in law.
- On 30 April 2010 the Director responded that the preliminary phase of the investigation was complete and that owing to the volcanic eruption in Iceland, certain further work had to be rescheduled to the first week in May.

According to the complainant, the sixty-day period for “tak[ing] a decision upon [a] claim of an official” expired on 11 March 2010, thus

entitling her to file a complaint with the Tribunal in the next ninety days, which she did on 9 June 2010.

15. Leaving aside any issues of receivability, this complaint is entirely without merit. The Director-General's letters of 11 and 12 January 2010 clearly indicate her endorsement of the relevant recommendation and her decision to arrange for an independent investigation. Further, as is evident in the above summary, timely action was taken in relation to the decision and the complainant was so informed.

16. For the sake of completeness, the Tribunal makes the following observation. The complainant's claims that she is entitled to participate in the investigation and that due process entitles her to information about the course of the investigation are equally without merit.

17. Paragraphs 22 and 23 of WHO Fraud Prevention Policy establish that the particulars of a fraud investigation are matters at the discretion of IOS or its nominee. Further, although paragraph 24 imposes on staff members a duty to cooperate with investigators, the Policy does not establish any participatory rights for a reporter of alleged misconduct. Lastly, paragraph 29 provides that fraud investigation results are to be disclosed on a "need to know" basis only.

18. On the grounds of its assertion that the complainant knew that the independent fraud investigation had been under way for nearly three months when she filed this complaint, the defendant asks the Tribunal to treat it as vexatious and amounting to an abuse of process warranting an award of costs against the complainant.

19. It is clear that the complainant knew that the fraud investigation was under way when she filed this complaint. The complaint also contains lengthy discussions of conduct that has either been finally adjudicated by the Tribunal, or is the subject

of complaints presently before the Tribunal. The language in the complaint is intemperate in that it contains unsupported, general allegations of dishonesty and conduct motivated by malice. However, it must also be noted that this case does have a lengthy history marked by acknowledged serious administrative delay.

20. In these circumstances, it is useful to reiterate the Tribunal's observation in Judgment 1884, under 8:

“The Tribunal has never heretofore imposed a costs penalty upon a complainant. However, it asserts unequivocally that it possesses the inherent power to do so as part of the necessary power to control its own process. [S]uch power must be exercised with the greatest care and only in the most exceptional situations since it is essential that the Tribunal should be open and accessible to international civil servants [...]. That said, [...] frivolous, vexatious and repeated complaints to the Tribunal absorb the latter's resources and impede its ability to deal [...] with the many meritorious complaints which come before it.”

21. As for the seventeenth complaint, it stems from the Director-General's decision to have an independent investigation into the forgery and identity theft allegations. One of the many matters in issue in the complainant's first complaint to the Tribunal was whether her “resignation” on 15 September 2005 was capable of being accepted by WHO. She argued that it was not, given her mental state at the time. In its surrejoinder the Organization annexed a number of e-mails of 13 and 14 September 2005 bearing the complainant's WHO address and her electronic signature. The complainant claimed that these were forgeries. In her complaint of harassment of 9 October 2009 to the Grievance Panel, the complainant alleged that three of the staff members named therein were complicit in the forgery. These allegations became the subject of the independent investigation noted above.

22. On 30 June 2010 the Director-General wrote to the complainant to inform her that the IOS had completed its investigation and concluded that the allegations of forgery and identity theft were unsupported by the evidence. On the basis of this report, the Director-

General decided that the allegations were unfounded. This decision is impugned before the Tribunal.

23. The complainant submits that the conduct and course of the IOS investigation deprived her of her right to due process, that the investigation was methodologically flawed, and that, by “concealing information”, the Administration acted in bad faith.

24. WHO raises issues of *res judicata*, standing and cause of action. Under Judgment 2839, the Organization had no obligation to conduct an independent investigation into the alleged forgeries. This was an independent initiative taken by the Director-General on the recommendation of the Grievance Panel. Given that the investigation has been conducted, the complainant has in fact obtained something which she sought but which was not granted by Judgment 2839. As she is a former staff member, there is nothing in her terms of appointment or in the applicable Staff Regulations and Staff Rules that give her any right with respect to the investigation or its outcome. This complaint is also irreceivable.

## DECISION

For the above reasons,

1. The sixth, seventh, eighth, ninth, twelfth, thirteenth, fifteenth, sixteenth and seventeenth complaints are dismissed as irreceivable.
2. The eleventh complaint is dismissed.

In witness of this judgment, adopted on 11 November 2011, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba  
Mary G. Gaudron  
Dolores M. Hansen  
Catherine Comtet