

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P. (Nos. 1 and 2)

v.

FAO

122nd Session

Judgment No. 3652

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms F. P. against the Food and Agriculture Organization of the United Nations (FAO) on 7 June 2013 and corrected on 24 June, the FAO's reply of 16 October, the complainant's rejoinder of 22 November 2013 and the FAO's surrejoinder of 6 March 2014;

Considering the second complaint filed by Ms F. P. against the FAO on 25 October 2013, the FAO's reply of 11 February 2014, the complainant's rejoinder of 8 April and the FAO's surrejoinder of 27 May 2014;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the cases may be summed up as follows:

In her first complaint, the complainant impugns the Director-General's decision to reject her appeal against the decision to appoint another candidate to the post of Fishery Liaison Officer (International Institutions), at grade P-4, published through vacancy announcement 2439-FIP. In her second complaint, she impugns the Director-General's decision to reject her appeal against the decision to appoint another candidate to the post of Fishery Liaison Officer, at grade P-4, published through vacancy announcement 2488-FIP.

The complainant, a French national, joined the FAO in April 2001. She was engaged by the FAO under various types of arrangements until April 2007. From April 2007 to March 2010 she served as a Fishery Liaison Officer, at grade P-3, in the Fisheries and Aquaculture Policy and Economics Division (FIP). In April 2010 she was appointed under a short-term appointment as a Fishery and Aquaculture Officer, at grade P-3 in the FishCode Programme. In March 2011 this appointment was converted into a fixed-term appointment.

On 28 June 2010 vacancy announcement 2439-FIP was issued for the post of Fishery Liaison Officer (International Institutions), at grade P-4, in FIP. The complainant applied for this post. Although she was initially selected for an interview, she was then told that she would not be interviewed because of her nationality. On 14 September she sent an e-mail to the Director, FIP, requesting that she be interviewed and evaluated on the basis of her qualifications for the post. The Director, FIP, replied that same day that in conformity with the applicable procedures, his division had consulted with the Professional Staff Selection Committee (PSSC or Selection Committee) and had been advised not to interview candidates of French nationality in the present circumstances, indicating that this was a matter of the FAO's policy on geographic balance. However, on 16 September 2010 the complainant was interviewed by the Interview Panel.

On the basis of the Interview Panel's evaluation of the candidates, the recruiting division transmitted an initial submission to the PSSC with a shortlist of the highest-ranking candidates on 23 September 2010. In that submission the complainant, who was the only internal candidate on the shortlist, was ranked second and Ms L. was ranked third. On 2 November 2010 another submission maintaining the same ranking was transmitted to the PSSC. Then, on 16 November 2010, the recruiting division forwarded to the PSSC the final submission under the heading "final signed version", containing a shortlist which ranked Ms L. first and the complainant third. On 2 December 2010 the PSSC endorsed the recruiting division's final submission of 16 November.

On 28 February 2011 the appointment of Ms L. to the advertised post was approved. On 26 May 2011 the complainant appealed that decision with the Director-General. Following the rejection of her

appeal on 25 July, she filed an appeal with the Appeals Committee on 18 August 2011, requesting the reversal of the decision to appoint Ms L., reconsideration by the PSSC of the recruiting division's submission for the post, compensation for the loss of salary and allowances at the P-4 level as of 28 February 2011, moral damages, costs and copies of all documents relevant to the selection process.

Prior to that, on 23 December 2010, vacancy announcement 2488-FIP was issued for the post of Fishery Liaison Officer, at grade P-4, in FIP. The complainant applied for this post but she was not invited to an interview. On 18 and 19 May 2011 the Interview Panel interviewed eight candidates for the post. On 30 May 2011 the complainant wrote to the Director, FIP, to ask why she had not been interviewed for a position the functions of which she said she had performed satisfactorily for four years. She received no reply. On 25 August 2011 she was informed of the appointment of Mr C. to the post advertised through vacancy announcement 2488-FIP.

On 21 November 2011 the complainant appealed to the Director-General concerning the decision to appoint Mr C. Following the rejection of her appeal, she filed an appeal with the Appeals Committee on 31 January 2012, requesting that the decision to appoint Mr C. be reversed, that new or supplementary interviews in which she would participate be conducted and that a new submission be made to the PSSC based on the principles set out in her appeal. The complainant also requested compensation for the loss of salary and allowances at the P-4 level as from August 2011, moral damages, costs and copies of all documents relevant to the selection process.

Having held a hearing on the complainant's first appeal, the Appeals Committee submitted its reports on the complainant's appeals on 10 October 2012 and 29 January 2013 respectively. As regards her first appeal, it concluded, inter alia, that there was no reason to suppose that the ranking in the initial shortlist prepared by the recruiting division on 23 September 2010 had been guided by considerations other than the candidates' merit and qualifications and it found no evidence of a violation of the rules or procedures until that date. After that date, however, it found that the selection process, including the result, had been disturbed by

the criterion of geographic distribution and had, therefore, been flawed. The Appeals Committee also raised concerns regarding the lack of transparency of the process and the FAO's "cavalier approach" in some of its replies to the complainant's submissions. It recommended that the PSSC reconsider the initial submission prepared by the recruiting division on 23 September 2010 on the basis that geographic distribution or other criteria, such as being an internal or external candidate, should not come into play unless the PSSC determines that the choice is between "equally well qualified" or "evenly matched" candidates and, depending on the outcome of this review, that the FAO determine, if necessary, the appropriate action or remedy. It recommended that the complainant's other requests be dismissed.

As regards the complainant's second appeal, the Appeals Committee recommended that the complainant be compensated for having been excluded from consideration from the start of the selection process due to her nationality, and that she be reimbursed the costs of her appeal up to a reasonable amount. As to the rest of her requests, it recommended that they be dismissed. On a more general level, the Appeals Committee recommended that the recruitment rules and procedures be clarified, given that the Revised Selection Procedures seemed to be in conflict with Article VIII, paragraph 3, of the FAO Constitution and their application to internal candidates was not clear.

By a letter of 1 March 2013, the Director-General informed the complainant that he had decided to reject her first appeal in its entirety. That is the impugned decision in the complainant's first complaint. By another letter of 29 July 2013, he informed her that he had also decided to dismiss her second appeal in its entirety and to offer her 10,000 euros in full and final settlement of all her claims. The specific terms of the settlement offer were attached to the letter. That is the impugned decision in the complainant's second complaint.

In her first complaint, the complainant asks the Tribunal to quash the impugned decision and to reverse the decision to appoint Ms L. to the post of Fishery Liaison Officer (International Institutions), at grade P-4. She also asks the Tribunal to order the FAO to reconsider the recruiting division's submission for the post on the basis of applicable legal principles.

She claims damages for the loss of salary and allowances at the P-4 level as of 28 February 2011, moral damages for the illegal treatment that she suffered on account of her nationality and 5,000 euros in costs. She also asks that the FAO be ordered to produce specific documents related to the selection process. In the event that the FAO refuses or is unable to produce any of the requested documents, she asks that the members of the Interview Panel be made available for questioning by her counsel.

In her second complaint, she asks the Tribunal to quash the impugned decision, to order the FAO to reverse the decision to appoint Mr C. to the post of Fishery Liaison Officer and to rerun the selection process for the post on the basis of applicable legal principles. She claims damages for the loss of salary and allowances at the P-4 level as of Mr C.'s effective date of appointment to the post, moral damages for the illegal treatment that she suffered on account of her nationality and for the FAO's delay in delivering the Director-General's final decision and 5,000 euros in costs. She also asks that the FAO be ordered to produce specific documents related to the selection process.

The FAO submits that there are no grounds to grant any of the complainant's claims and that its refusal to produce the documents requested by her is in line with the Tribunal's case law. It asks the Tribunal to dismiss the complaints *in toto*. Further to the Tribunal's request, the FAO transmitted to Ms L. and Mr C. respectively a copy of the complainant's first and second complaints to permit them to express their views, but they chose not to do so.

CONSIDERATIONS

1. The first complaint arises out of the complainant's unsuccessful application, as an internal candidate, for the post of Fishery Liaison Officer (International Institutions) at the P-4 grade, which was advertised through vacancy announcement 2439-FIP issued on 28 June 2010. Internally, she challenged the decision not to select her for the post and, in particular, the process by which the decision was made.

2. The second complaint arises out of her application, as an internal candidate, for the post of Fishery Liaison Officer at the P-4 grade, which was advertised through vacancy announcement 2488-FIP issued on 23 December 2010. She was not invited for an interview and challenged that decision.

3. Since the resolution of these complaints depends upon the same legal principles and internal regulatory provisions of the FAO, the Tribunal conveniently joins them in this judgment.

4. The complainant claims, in her first complaint, that the successful candidate was not lawfully appointed to the post. She seeks an order requiring the FAO to reconsider the recruiting division's submission for the post, properly applying relevant legal principles and internal regulations. The Tribunal notes that on the basis of the Interview Panel's evaluation of the candidates, the recruiting division transmitted an initial submission to the Selection Committee with a shortlist on 23 September 2010. On that short-list Mr H. was ranked first, the complainant second and Ms L. third. On 2 November 2010 a new submission maintaining the same ranking was transmitted to the PSSC. Finally, on 16 November 2010, the recruiting division forwarded to the PSSC a revised submission, entitled "final signed version", with a short-list which ranked Ms L. as the first candidate, Mr H. as the second and the complainant as the third. On 2 December 2010 the PSSC endorsed the recruiting division's submission of 16 November.

5. In its report to the Director-General, the Appeals Committee recommended that:

"the PSSC reconsider the initial submission prepared by the recruiting division (dated 23 September 2010), it being recalled that geographic distribution, or other criteria such as being an internal or external candidate, should not come into play unless the PSSC determines that the choice is between 'equally well qualified' or 'evenly matched' candidates; and that, depending on the outcome of this review, the Organization determine, if necessary, the appropriate action or remedy".

In the impugned decision, the Director-General rejected this recommendation and dismissed the complainant's appeal.

6. In her complaint in the Tribunal, the complainant essentially adopts the Appeals Committee's recommendation and claims that, by selecting a candidate other than herself for the post, the FAO breached its own rules in that it gave primary consideration to geographic distribution of posts and nationality, when its own Constitution, the General Rules, and the Administrative Manual, including the Staff Regulations and Staff Rules, as well as the applicable principles stated in the Tribunal's case law, direct that the paramount consideration must be to secure the highest standards of efficiency and technical competence. The complainant also claims that the impugned decision was based on errors of fact and law in that the Appeals Committee's recommendation was misconstrued in the impugned decision. In the third place, she requests relevant documents from the selection process which the FAO had made available to the Appeals Committee but not to her.

7. The Tribunal's case law has it that a staff appointment by an international organisation is a decision that lies within the discretion of its executive head. Such a decision is subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence (see Judgment 3537, under 10). Nevertheless, anyone who applies for a post to be filled by some process of selection is entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right which every applicant must enjoy, whatever her or his hope of success may be (see, inter alia, Judgment 2163, under 1, and the case law cited therein, and Judgment 3209, under 11). It was also stated that an organisation must abide by the rules on selection and, when the process proves to be flawed, the Tribunal can quash any resulting appointment, albeit on the understanding that the organisation must ensure that the successful candidate is shielded from any injury which may result from the cancellation of her or his appointment, which she or he accepted in good faith (see, for example, Judgment 3130, under 10 and 11).

8. Regarding the provisions that are applicable to the present case, Article VIII, paragraph 1, of the Constitution of the FAO provides as follows:

“The staff of the Organization shall be appointed by the Director-General in accordance with such procedure as may be determined by rules made by the Conference.”

Paragraph 3 of the same Article states that:

“In appointing the staff, the Director-General shall, subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of selecting personnel recruited on as wide a geographical basis as is possible.”

This provision is in turn mirrored by Staff Regulation 301.4.2, which relevantly states as follows:

“The paramount consideration in the appointment, transfer, or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.”

Rule XL, paragraphs 1 and 4, of the General Rules provide as follows:

“1. The staff of the Organization shall be appointed by the Director-General, having regard to paragraph 3 of Article VIII of the Constitution. Selection and remuneration shall be made without regard to race, nationality, creed or sex. [...]

[...]

4. Except as provided in paragraph 1 of this Rule, the Director-General shall act in his unfettered judgement in appointing, assigning and promoting staff personnel, and shall not be bound to accept advice or request from any other source.”

Staff Regulation 301.4.4 states as follows:

“Subject to the provisions of Rule XXXIX(2) of the General Rules of the Organization, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the Organization. This consideration shall also apply on a reciprocal basis to the United Nations and to the specialized agencies brought into relationship with the Organization.”

Staff Rule 302.4.93 states that “[w]hen a post becomes vacant, first consideration shall be given to the possibility of promoting a properly-qualified staff member. [...]”

9. Appendix A to Section 305 of the FAO Manual sets out the terms of reference of the Selection Committee. The Committee is empowered to make recommendations to the Director-General: (a) for appointments and promotions to professional posts of one year or more; (b) for the extension of short-term appointments beyond one year; and (c) for transfers, other than those made without posting vacancy announcements in accordance with Staff Rule 302.4.92. Its area of competence covers all professional posts, among others. Further, Manual paragraph 305.3.2 relevantly sets out the responsibilities of the Recruiting Unit as follows:

“3.21 Reviews all applications received.

.3.22 Following review of applications referred for a specific vacancy:

- (a) interviews all FAO internal applicants, where possible, unless the candidate is well known to the selection official or has recently been interviewed for a similar post;
- (b) recommends the candidates it considers best qualified, having paid due regard to geographic representation (see Manual para. 305.4.3);
- (c) prepares a comparative evaluation of all candidates on form AFP 111, ‘Submission to Staff Selection Committee’, for forwarding to the appropriate selection committee.”

Paragraph 3 of Appendix A to Section 305 of the Manual states as follows:

“Applying the principle laid down in Staff Regulation 301.4.2 that it is necessary to secure the highest standards of efficiency, competence and integrity with due regard to the recruitment of staff on as wide a geographical basis as possible, and recognizing the need to ensure a more equitable proportion of women employees:

- (a) the Committee recommends for selection the candidate whose qualifications and experience most closely meet the requirements of the post as set out in the vacancy announcement. The Committee should recommend a minimum of three such candidates, ranked in order of priority. The Committee may recommend the waiving of an ‘essential qualification’ but must state the compensating grounds on which the candidate is recommended.
- (b) if several candidates are equally well qualified, the order of preference for selection could be as follows:
 - (i) a staff member holding a continuing appointment who is without, or shortly to be without, an assignment, provided such placement does not represent a promotion [...];

- (ii) seniority with the Organization;
- (iii) a candidate from a country not geographically over-represented;
- (iv) staff member of another UN organization.”

Manual paragraph 305.4.22 states that:

“When a vacancy cannot be filled from either within the Organization or from applicants of UN or other specialized agencies, external candidates are considered.”

Manual paragraph 305.4.33 states that:

“In filling a vacancy in the Professional category at Headquarters or in offices away from Headquarters, priority is given to qualified candidates who are nationals of member States ‘under-represented’ or ‘non-represented’ on the staff. The consideration of geographic distribution is also applied [...]”

10. Guidelines for Recruitment are provided in the Revised Selection Procedures for Professional Staff (P-1 to P-5 and NO-1 to NO-4) subject to appointments through the PSSC, which came into effect on 1 August 2010. Paragraphs 1, 3 and 5 provide as follows:

“1. The Human Resources Management Division (CSH) shall establish a corporate gender and geographic representation plan which will include targets for gender and geographic representation for each Department or Office.

[...]

3. Divisions/Offices should prepare their submission to the PSSC giving paramount importance to securing the highest standards of efficiency and technical competence and taking also into account the established targets and plans for gender and geographic representation. The following should be adhered to:

- (i) **Gender:** Recruiting Units should ensure that at least one **qualified** female candidate is included in the shortlist. In cases where only one female candidate is short-listed and is not subsequently endorsed by the PSSC, the submission will be treated as not meeting the gender requirement and returned to the recruiting Unit for inclusion of a qualified female candidate. If, for compelling reasons, no female candidate can be included in the shortlist, the Department/Office Head should undertake consultations with the Director-General before proceeding with the submission to the PSSC.
- (ii) **Geographic Balance.** If the list of candidates to be interviewed includes one or more candidates from over-represented

countries, or from countries that have reached their upper limit in the desirable range of equitable representation – i.e. external candidates and staff members who are not counted in the geographic distribution at the time of selection – the Department/Office Head should undertake consultations with the Director-General on the issue of geographic representation before proceeding with the interview process. In cases where the country is about to reach the upper limit (i.e. two staff members below the maximum), the recruiting Unit should contact the PSSC Secretariat to ensure that no other submissions under consideration, or recruitment in process, contain a candidate whose possible appointment could cause the country in question to reach the upper limit. If there is no such a case, the candidate may be interviewed; otherwise, consultation should be undertaken with the Director-General before proceeding with the interview process.

[...]

5. Subject to the foregoing, submissions for the recruitment of professional staff shall be forwarded to the PSSC for review in accordance with its TORs and established procedures.”

11. The Director-General’s discretion to appoint staff members must be exercised in accordance with the foregoing provisions and the general principles of law governing the international civil service, as discretion must be exercised within the bounds of legality.

12. The foregoing provisions of the Constitution, which has paramount force, and the Tribunal’s case law on these provisions mandate that the overriding consideration for appointment to professional posts is whether a candidate meets the criteria set out for the post as advertised and her or his appointment is meritorious in a manner that secures the highest standards of efficiency, competence and integrity. The PSSC may however recommend the waiver of an essential qualification but must state the compensating grounds on which the candidate is recommended. The authority to grant the waiver, which may include the waiver of academic qualifications, country membership, experience and language, among others, is retained by the Director-General. Where candidates are equally well qualified, preference should be given to an internal candidate, and, reciprocally, to applicants from the United Nations

or from other specialized agencies which are brought into relationship with the FAO. This, as well as nationality and geographic distribution, gender and such preferences or considerations would be taken into account only where candidates were “equally well qualified” or “evenly matched” on experience and qualifications, as the advertised post requires. They are not taken into consideration where there is “a significant and relevant difference between the candidates”.

Accordingly, it was relevantly stated as follows in Judgment 2712, under 5 and 6:

“5. The Tribunal has consistently held that an international organisation which decides to hold a competition in order to fill a post cannot select a candidate who does not satisfy one of the required qualifications stipulated in the vacancy announcement (see for example Judgments 1158, 1646 and 2584.)

Such conduct, which is tantamount to modifying the criteria for appointment to the post during the selection process, incurs the Tribunal’s censure on two counts. Firstly, it violates the principle of *tu patere legem quam ipse fecisti*, which forbids the Administration to ignore the rules it has itself defined. In this respect, a modification of the applicable criteria during the selection procedure more generally undermines the requirements of mutual trust and fairness which international organisations have a duty to observe in their relations with their staff. [...]

6. [...]

[T]he fact that the appointment of the successful candidate, [...] conveniently enabled [the Organization] to achieve some of its management goals, such as that of increasing the proportion of women in senior management positions or that of the geographical distribution of its officials – which is encouraged by Staff Regulation 4.2 – is likewise irrelevant in this case. However legitimate these goals may be, they could not override the Organization’s obligation to appoint to the post in question a candidate who possessed the required qualifications and experience initially stipulated. Geographical origin could be taken into consideration only if the opposing candidates were of equal merit.”

Similarly, it was stated in Judgment 2392, under 9:

“It is well settled that preferences such as those mentioned [i.e. by reason of being an internal candidate and by reason of gender] must be given effect to where the choice has to be made between candidates who are evenly matched. On the other hand, they have no role to play where there is a significant and relevant difference between the candidates. [...]

13. The complainant argues that the selection process was tainted because paramount consideration was not given to the qualifications of the candidates in order to secure the highest standards of efficiency, competence and integrity. She insists that nationality and geographic distribution were given paramount consideration. She also contends that her status as an internal candidate was overlooked during the selection process.

14. It is noteworthy that the complainant was at first informed that she would not be interviewed, notwithstanding that she was short-listed. Manual paragraph 305.3.22(a) provides for the interview of all internal applicants, where possible, unless the applicant is well known to the selection official or was recently interviewed for a similar post. The complainant had not been recently interviewed for a similar post. The FAO states that the decision not to interview her was made because she was well known to the five selection officials, as she had been employed in the Fisheries and Aquaculture Department for a number of years. This must mean that the officials knew of the standard of efficiency of her work, as well as her competence and integrity and fitness for the post as advertised. The complainant had worked with the Fisheries and Aquaculture Department in a similar position, but at grade P-3 for some time. It is not clear that the initial decision was made on the basis of geographic representation or nationality, as she asserts. However, the complainant was ultimately interviewed.

15. A matter which is more critical, however, is a concern for the integrity of the interview process, which the Appeals Committee raised in its report to the Director-General. The Committee expressed concern regarding the lack of transparency in the process, “including the fact that there [were] no available records of the scores from the interviews, which made it impossible for the Committee to verify whether the appellant’s assumption, that there was one point of difference between her and the original first ranked candidate, was accurate, and, if so, to consider whether there was ‘a significant and relevant difference between’ the external and internal candidates which could have led the PSSC, had it had a chance to review the original submission, to recommend a change in their respective rankings”.

16. This, in the Tribunal's view, reflects a serious flaw in the early stages of the selection process. The scores from the interview stage of the selection process were critically important to assist in the determination whether the paramount consideration for selection secured the highest standards of efficiency, technical competence and integrity. They were also necessary to assist in the determination whether the candidates were equally well qualified, so that as an internal candidate, the complainant should have benefitted from that or the gender preference. With the reports from the subsequent stages of the selection process, those scores could have assisted to explain why the complainant was placed second in the two preliminary submissions and why that changed to third in the final submission that was transmitted to the PSSC on 16 November 2010. They could also have assisted to explain to the PSSC that paramount consideration was accorded to the qualifications required in the vacancy announcement; whether the candidates were equally well qualified or otherwise, and, ultimately, whether the complainant should have had the benefit of any preference. They could also have assisted to confirm these same matters for the Appeals Committee in the internal appeal, and for the Tribunal on this complaint.

17. In the second place, the Tribunal is concerned, as the Appeals Committee was, that it cannot be determined either from the records of the selection process or from the submissions by the recruiting division to the Selection Committee whether or not geographic distribution or nationality influenced the selection of the successful candidate and militated against the complainant. This is of particular concern given the FAO's statement that "there may have been misunderstandings regarding the geographic distribution status of the country of nationality of the interviewed applicants, including in particular of the [c]omplainant", and that "[d]espite the geographic distribution report of September 2010 [...] accurate information may not have been communicated to the recruiting Division and the [c]omplainant".

18. The complainant asks the Tribunal to order the FAO to reconsider the recruiting division's submission for the post on the basis of applicable legal principles. The Tribunal considers this to be

impracticable given the time that has elapsed. Instead, the complainant will be awarded material damages for the loss of a valuable opportunity of being selected for the post.

19. Given this result, it is unnecessary to order the disclosure of the documents which the complainant seeks. The complainant is not entitled to damages for loss of salary and allowances at the P-4 grade, which she seeks, as there were other candidates for the post and what she had was an expectation that she might be selected. The complainant will also be awarded costs in the amount of 1,000 euros.

20. In her second complaint the complainant challenges the decision not to interview her for the post which was advertised through vacancy announcement 2488-FIP. The Appeals Committee recommended that the complainant's requests for remedies be rejected. It however recommended that the complainant be compensated for having been excluded from consideration for the interview, and indeed "from the start of the selection process due to her nationality, leaving it to the Organization to determine the appropriate amount or measure". The Committee also recommended that the FAO should reimburse the complainant up to a reasonable amount for her legal costs.

21. In the impugned decision of 29 July 2013, the Director-General "decided to reject the recommendations of the Appeals Committee and to dismiss [the] appeal in its entirety". However, he offered the complainant 10,000 euros "in full and final settlement of [her] claims" on stated terms and conditions.

22. The complainant seeks to have the impugned decision set aside. She also seeks an order that the decision to appoint Mr C. to the subject post be reversed and that the selection process be annulled and be redone; an order that the documents from the selection process be disclosed to her; damages for loss of salary and allowances at the P-4 grade from the date that Mr C. was appointed to the subject post; moral damages "for the illegal treatment [she] has suffered on account of her nationality"; "moral damages for delay in delivering the Director-General's

decision”, and costs for the internal appeal proceedings, as well as the proceedings before the Tribunal.

23. Manual paragraph 305.3.22(a) provides that “all FAO internal applicants [are to be interviewed], where possible, unless the candidate is well known to the selection official or has recently been interviewed for a similar post”. The complainant could have been excluded from the interview as she was interviewed in September 2010 for a similar post. Additionally, she was an internal candidate who had worked in the Fisheries and Aquaculture Department as from April 2007, first as a Fishery Liaison Officer and then as a Fishery and Aquaculture Officer, both at the P-3 grade, performing duties that were similar in some respects to those of the subject post and she may therefore have been well known to the selection officials. However, neither of these reasons was advanced for her exclusion from the interview process.

24. In rejecting her appeal to the Director-General, the Assistant Director-General stated in his letter of 4 January 2012 that the applicable rules on selection for appointment to a professional post require that paramount importance be given “to securing the highest standards of efficiency and technical competence and taking also into account the established targets and plans for gender and geographic distribution”. The letter then stated that the procedures for selection were followed leading to the selection of Mr C. for the subject post and that:

“All applications, including yours, were considered in good faith and in keeping with the basic rules of fair and open competition. With respect to the fact that you were not interviewed as part of the selection process, this decision was taken on the basis that the initial screening of applicants showed that there were a number of applicants who held the nationality of a country that was non-represented or under-represented in the geographic distribution of staff members of the Organization, and that these candidates were equally or better-qualified than you were for the post. The decision to select [Mr C.] was made on the basis of an assessment that he was clearly the most qualified candidate for the post.”

25. This statement shows that the decision not to interview the complainant was not made with the paramount consideration to ensure the “highest standards of efficiency, technical competence and integrity”

above all other criteria and preferences, in the first place. Neither does it reflect adherence to the provision in Appendix A to Manual Section 305 entitled “Terms of Reference and Procedure for FAO Professional Staff Selection Committee”, which requires that the PSSC “recommends for selection the candidate whose qualifications and experience most closely meet the requirements of the post as set out in the vacancy announcement”. The stated principle is that the nationality of a country that was non-represented or under-represented in the geographic distribution of staff members is only to be taken into account when candidates are equally well qualified. It was in error that qualifications, nationality and geographic distribution were accorded equal weight at that early stage of the process, as the foregoing statement indicates.

26. Moreover, it is apparent, as the Appeals Committee found, that at the time when the decision was taken to exclude the complainant from the interview, France was already over-represented in the geographic distribution of staff members of the Organization. This, as the Appeals Committee correctly found, was based on the Director-General’s Bulletin No. 2011/53 of 23 September 2011, which clarified the revised methodology for the calculation of geographic distribution representation adopted in November 2003. Accordingly, under paragraph 3(ii) of the revised Selection Procedures, since the complainant was not counted in the geographic distribution at the time of selection, the Department or Office Head should have consulted with the Director-General on the issue of geographic representation before proceeding with the interview process. There is nothing that suggests that this was done in this case.

Furthermore, while according to the statement that is reproduced at consideration 24 of this judgment the recruiting division took the complainant’s nationality and geographic distribution into account, it accorded no consideration to the complainant’s gender. It is important from this perspective to note that when the Appeals Committee reviewed the justification provided by the recruiting division in its submission to the PSSC following the interviews, the Committee found that the complainant was listed as having the minimum requirements but was not recommended for selection. The recruiting division had noted in the submission to the PSSC that the complainant, among other candidates,

was not selected because “Implementation of Conference resolution 1/1999 applie[d] as equally-qualified candidates ha[d] been short-listed”. However, the recruiting division made no statement in the submission that any of the candidates short-listed, including Mr C., was better qualified than the complainant.

27. In effect, the complainant was not only excluded from the interview, but also from being properly considered for selection based on the wrongful application of the provisions for selection.

28. The complainant asks the Tribunal to order the FAO to rerun the selection process on the basis of applicable legal principles. The Tribunal considers this to be impracticable given the time that has elapsed. Instead, the complainant will be awarded material damages for the loss of a valuable opportunity of being selected for the post. For this loss of opportunity, together with that determined in consideration 18, above, the complainant will be awarded 30,000 euros in material damages. She will also be awarded moral damages in the amount of 30,000 euros for the injury which she suffered as a consequence of the unlawful selection processes in both of her complaints, as well as for the unreasonable delay in the delivery of the impugned decision in her second complaint. The Tribunal notes that the impugned decision was delivered six months after the report of the Appeals Committee.

29. Given this result, it is unnecessary to order the disclosure of the documents which the complainant seeks.

The complainant is not entitled to damages for loss of salary and allowances at the P-4 grade, as there were other candidates for the post and what she had was an expectation that she might be selected. The complainant will also be awarded costs in the amount of 1,000 euros in her second complaint.

DECISION

For the above reasons,

1. The FAO shall pay the complainant a total of 30,000 euros material damages in both complaints.
2. The FAO shall pay the complainant 30,000 euros moral damages.
3. The FAO shall pay the complainant a total of 2,000 euros costs on both complaints.
4. All other claims are dismissed.

In witness of this judgment, adopted on 17 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

ANDREW BUTLER