

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. Z. (No. 6)

v.

IFAD

134th Session

Judgment No. 4547

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms R. B. Z. against the International Fund for Agricultural Development (IFAD) on 24 January 2019, IFAD's reply of 1 July 2019, the complainant's rejoinder of 21 February 2020 and IFAD's surrejoinder of 8 September 2020;

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 of the President of IFAD to find her internal complaint of harassment and abuse of authority unfounded.

On 1 February 2014 the complainant joined the IFAD Office in Bujumbura, Burundi, as a Country Programme Officer (CPM) at grade P-4 in the East and Southern Africa Division under a short-term appointment until August 2014. Following a selection process, she was later appointed for a two-year fixed term in the same position from 4 September 2014 until 4 September 2016, and was designated as IFAD Representative in Burundi.

At the end of the first five months of her probationary period, the complainant received a generally positive mid-point assessment report from her then regional director and supervisor, which she signed on 1 February 2015. However, a number of recommendations were made to enable the complainant to improve her performance.

On 6 August 2015 her new regional director and supervisor, in post since 1 April 2015, sent her the probation report covering the first year of her contract, in which he proposed that the probationary period be extended for six months, until 4 March 2016. The complainant inserted her comments and they both signed the report, which was finalised on 22 August 2015. She explicitly agreed to a six-month extension of her probationary period. On 28 September 2015 her supervisor sent her a performance improvement plan (PIP) for the six-month period from 5 September 2015 to 4 March 2016. It was duly signed by the complainant.

A probation report was drawn up at the end of the 18-month period. It was signed on 16 May 2016 by the complainant's supervisor and on 26 May 2016 by her head of department. Given that the probationary period had come to an end and the prescribed maximum duration had been reached on 4 March 2016, the complainant's appointment was confirmed on that date pursuant to IFAD Staff Rule 2.5. However, in view of the weaknesses identified in crucial competencies required for the role of CPM and the fact that, under the applicable rules, the probationary period could not be further extended, it was decided that the complainant would be placed on a new PIP until 3 March 2017.

On 22 November 2016 the complainant lodged an appeal with the Joint Appeals Board (JAB), seeking the rescission of the decision to place her on a new performance improvement period, the second PIP, signed by the supervisor on 2 September 2016 and by the complainant on 15 September and covering the period from 4 September 2016 to 3 March 2017, and the decision of 2 September 2016 to extend her employment contract only until 4 March 2017. The JAB delivered its report on 31 January 2017. It found that the appeal was irreceivable *ratione temporis* because it had not been sent to the competent authority in good time and was time-barred. It also found that the appeal was partly irreceivable because it was, inter alia, directed against a decision

which was still under discussion between the parties, namely the second PIP. It further considered that the appeal was unfounded in any event, and therefore recommended that it be rejected. The President endorsed those recommendations in a letter of 20 February 2017.

In her first complaint, filed on 6 June 2017, the complainant requested the Tribunal to set aside the President's decision of 20 February 2017 together with the probation reports of August 2015 and May 2016 and the first PIP of September 2015. The Tribunal dismissed that complaint in Judgment 4542, also delivered in public today.

In the meantime, in view of her partially unsatisfactory performance, the complainant's appointment was extended by a period of only six months, from 4 September 2016 to 3 March 2017. A decision was then taken on 3 March 2017 not to renew her appointment with effect from 3 April 2017.

The complainant lodged three internal appeals with the JAB against the final performance evaluation report (known as the Performance Evaluation System or PES document) for 2016, the decision to extend her appointment by only six months and the decision not to renew her appointment.

After deciding to join the three appeals, the JAB found that the complainant's alleged underperformance had not been properly substantiated. In its report of 4 June 2018, it recommended that the complainant's PES document for 2016 be considered invalid, that it be removed from the complainant's personal file, and that the decision not to renew her appointment be rescinded. By letter of 25 July 2018, the President informed the complainant of his decision not to endorse the JAB's recommendations and accordingly to reject her three internal appeals.

As a result, the complainant filed three complaints with the Tribunal (her second, third and fourth), in which she primarily sought the setting aside of her PES document for 2016, the decision to extend her appointment by only six months, and the decision not to renew her appointment.

The Tribunal dismissed those complaints in Judgments 4543, 4544 and 4545, also delivered in public today.

In the meantime, the complainant left IFAD on 3 April 2017.

In an email of 2 January 2018, the complainant pointed out that she had always been paid on the basis of step 1 of grade P-4, the classification assigned when she was appointed for a fixed term. She requested payment of “supplementary remuneration and [other] financial benefits” on the basis of step 2, then 3, of her grade, together with interest and the reconstitution of her pension entitlements or, alternatively, compensation for the material and moral injury she considered she had suffered.

After a reminder sent on 1 February 2018, the Organisation replied to the complainant on 2 February 2018, stating that the sums paid in full and final settlement were correct and that she had not been granted a step increment during her tenure owing to her unsatisfactory service.

The complainant requested a review of this decision on 1 March 2018. It was confirmed by a letter of 20 April 2018.

Following the internal appeal lodged on 1 May 2018, the JAB stated in its report of 31 July 2018 that the Organisation’s position could not be supported in view of the JAB’s previous report of 4 June 2018, the findings of which it reproduced.

By a letter of 11 September 2018, the President informed the complainant of his decision not to endorse the JAB’s recommendation and to reject her appeal. The complainant impugned that decision before the Tribunal in her fifth complaint, filed on 7 December 2018.

The Tribunal dismissed that fifth complaint in Judgment 4546, also delivered in public today.

On 2 April 2017, the day before she left IFAD, the complainant submitted to the Ethics Office an internal complaint for harassment and abuse of authority directed against her supervisor. After a preliminary examination of the internal complaint, the Ethics Office forwarded it to the Office of Audit and Oversight (AUO). The complainant was interviewed by AUO on 12 May 2017. On 27 June she provided it with

a supplementary submission to her internal complaint, and in July she submitted additional documents in response to the questions put to her.

On 9 November 2017 the complainant was informed of the findings of the AUO investigation. In its report AUO, which held that it was not in its mandate to investigate the acts of harassment related to the complainant's performance evaluation, examined three acts alleged by the complainant, namely the allegation of "post abandonment", the refusal to allow her to take her end-of-year annual leave early and the refusal to grant her a period of compensatory leave as she wished. AUO found that these acts did not constitute harassment and concluded that the case should be closed. The next day, the complainant contacted the President to ascertain whether a decision had yet to be taken on her internal complaint. She requested copies of the investigation report and the records of interviews with the people concerned and witnesses. She also claimed compensation for the injury she considered she had suffered as a result of harassment and damage to her dignity and career.

On 16 November 2017 the complainant was told that the rules applicable within IFAD did not allow investigation reports to be disclosed to staff members who lodged internal complaints and that the rules had been followed in this respect since she had been informed of the findings of the investigation and its closure.

On 8 December 2017 the complainant requested a review of the decision taken at the end of the investigation into her internal complaint, but that decision was confirmed by the Director of the Human Resources Division (HRD) on 16 January 2018.

On 2 March 2018 the complainant lodged an appeal with the JAB seeking compensation for the injury she considered she had suffered.

In its report of 11 September 2018 the JAB, having found that the complainant was neither a subject of the investigation nor a party to it, considered that she had no legal interest in seeking compensation for the injury allegedly suffered as a result of the decision to close the case. It therefore recommended that the internal appeal be rejected.

By a letter of 23 October 2018 the President endorsed the JAB's findings and recommendations and rejected the internal appeal. That is the decision impugned by the complainant in this sixth complaint.

The complainant requests the Tribunal to set aside the impugned decision and the previous decisions of 16 January 2018 and 9 November 2017, to award her compensation for all the material and moral injury she considers she has suffered – including by means of her reinstatement and a new three-year appointment – and to order IFAD to pay costs in the amount of 10,000 euros.

IFAD submits that several of the complainant's claims are irreceivable. It argues that, by filing a complaint with the Tribunal, the complainant is seeking a re-examination of her internal complaint whereas her case was closed by AUO. It submits that the JAB is not competent to take a decision on the outcome of an inherently confidential procedure conducted by AUO and that the Tribunal has a limited power of review in this area. It contends that the complainant has no cause of action. Furthermore, IFAD submits that the claim for compensation for the injury suffered, which was first made before the JAB and quantified before the Tribunal, is a new and unfounded claim. It asks the Tribunal to reject the complaint in its entirety.

CONSIDERATIONS

1. The complainant seeks the setting aside of the impugned decision of 23 October 2018 together with the earlier decisions of 9 November 2017 and 16 January 2018, which rejected her internal complaint of moral harassment.

2. Firstly, the complainant argues that the review procedure leading to the decision of 16 January 2018 was flawed. She submits that, contrary to section 9.3(ii) of Chapter 9 of the Human Resources Implementing Procedures, the Director of HRD did not inform the manager who had taken the decision that it had been challenged in a request for review and that manager did not then take the initiative to open a dialogue with the complainant.

The Tribunal considers that the complainant's plea challenging the lawfulness of the decision of 16 January 2018 must be seen in the particular context of the case. The complainant never complained of any harassment or abuse of authority by her supervisor in any of the several internal appeals that she lodged with the JAB. At most, she submitted that he lacked impartiality, a contention that the Tribunal dismissed in Judgments 4543, 4544 and 4545, also delivered in public today on the complainant's second, third and fourth complaints. The complainant did not initiate the internal procedure to complain of harassment by her supervisor until 2 April 2017, the day before she left IFAD permanently. During the examination of that internal complaint, the complainant had the opportunity, in a letter of 26 June 2017, to lodge submissions in addition to those she had already made in that internal complaint, and on 9 November 2017 she was able to answer further questions put by AUO. Moreover, having regard to the content of the complainant's request for review of 8 December 2017, the author of the decision of 16 January 2018 could legitimately form the view that the request for review did not contain anything new that warranted modifying the initial decision of 16 November 2017. In such circumstances, it can reasonably be found that the procedure provided for in section 9.3(ii) of Chapter 9 of the Implementing Procedures has been observed.

The complainant's first plea is therefore unfounded.

3. The complainant enters a second plea against the President's final decision of 23 October 2018, in which he endorsed the JAB's findings and recommendations and rejected her internal appeal. Given that she lodged an internal complaint of harassment and abuse of authority against her supervisor, the complainant contends that the decision to close the case after the investigation, without acknowledging the harassment or any violation of her dignity and without compensating her for the injury suffered, indisputably harmed her because she is directly affected by the decision taken on that complaint. She argues that failure to recognise this fact constitutes an error of law and breaches her right to an effective remedy.

In its report of 11 September 2018, to which the President explicitly referred when he rejected the complainant's internal appeal, the JAB found that the complainant was neither a subject of the investigation nor a party to it and considered that she had no legal interest in seeking compensation for injury suffered as a result of the decision to close the case.

In his decision of 23 October 2018, the President, after referring to the JAB's report, stated to the complainant: "I have carefully reviewed the JAB [r]eport and [r]ecommendations and the documentation submitted in relation to your [a]ppeal and I am satisfied that your complaint was investigated by AUO in accordance with IFAD's applicable rules and procedures and carried out appropriately to ascertain all relevant facts [...]".

However, the Tribunal emphasises – and will explain further in consideration 6, below – that a staff member who lodges a harassment complaint is plainly a party to the procedure conducted to ascertain whether that complaint is well founded, even though she or he would not be a party to any subsequent disciplinary proceedings taken against the perpetrator in the event that the harassment was recognised. The staff member concerned is therefore entitled to know whether it has been recognised that acts of harassment have been committed against her or him and, if so, to be informed how the organisation intends to compensate her or him for the material and/or moral injury suffered (see, in this respect, Judgments 3965, consideration 9, and 4541, also delivered in public today, consideration 4, both of which concern harassment complaints). In the present case, and since such an explanation of reasons could, inter alia, support a possible claim for compensation for the injury suffered, the complainant should have been adequately informed, in the President's final decision of 23 October 2018, of the reasons why the organisation did or did not recognise the existence of harassment by her supervisor (see Judgments 3096, consideration 15, and abovementioned 4541, consideration 4). As she was not, the decision of 23 October 2018 is fundamentally flawed, since the staff member who engaged the procedure, while not entitled to be informed of any measures taken against the alleged harasser, is entitled to a decision

on the question of harassment itself (see, to that effect, Judgments 3096, consideration 15, 4207, considerations 14 and 15, and aforementioned 4541, consideration 4).

In view of the foregoing, the President's reasoning is clearly inadequate, as it is limited to a reference to the report and recommendations of the JAB, which evidently likewise failed to take into account the principles set out above when carrying out its work. Given that the President merely stated that the complainant's internal complaint had been examined by AUO in accordance with the rules and procedures applicable within IFAD through the conduct of a full investigation, the Tribunal considers that such reasoning, which takes no account of the complainant's criticisms in her internal appeal, does not constitute adequate reasoning for the purposes of the case law according to which any decision adversely affecting a staff member must state the reasons on which it is based (see, for example, Judgment 2347, considerations 11 and 12) and consequently must be founded on valid grounds (see, for example, Judgment 4108, consideration 3). This is especially so because the allegations of harassment based on the supervisor's actions during the various procedures for evaluating the complainant's performance, whether during the probationary period, during the performance evaluation procedure itself or in the context of the PIPs on which the complainant was placed, were not examined either by AUO in its investigation report or by the President in his decision of 23 October 2018.

Accordingly, the second plea is well founded and the President's decision of 23 October 2018 is unlawful.

4. With regard to the rules applied by the JAB, the complainant firstly alleges a breach of her right to a fair hearing in the internal procedure in that the JAB simply agreed with IFAD's contention that she had no cause of action and completely ignored her view, even though a decisive point – namely the receivability of her appeal – was at issue.

5. IFAD firstly submits, in essence, that the internal appeal against the decision to close the investigation was irreceivable before the JAB, as is the present complaint before the Tribunal, because the

complainant has no cause of action. The organisation points out that the complainant's appointment ended on 3 April 2017. It submits that the JAB's competence does not extend to reviewing investigations carried out by AUO. It further observes that the complainant is merely seeking a fresh examination of the evidence of her allegations by the Tribunal, even though she is not personally affected by the closure of the investigation or any steps taken at its end. Referring to Judgments 4207 (consideration 14) and 4299 (considerations 4 and 5), IFAD also argues that the complainant has no cause of action before the Tribunal "because:

- (a) [the complainant] was not the subject of the internal complaint and so was not a party to the preliminary investigation;
- (b) there are no provisions in the rules applicable within IFAD granting compensation to persons who report allegations of harassment or other misconduct even when they claim to be victims thereof;
- (c) an organisation can only fulfil its duty to protect its staff members if it is alerted in good time; the [c]omplainant lodged her internal complaint with [the Ethics Office] the day before her contract with IFAD ended, when she was no longer in post and so had not been in contact with her supervisor for almost a month; the [c]omplainant could not therefore be affected by any decision concerning steps taken in response to her internal complaint".

6. Regarding the position taken by the JAB, the Tribunal considers that a decision of an international organisation finding that a harassment complaint is unfounded and rejecting a claim for compensation for the material or moral injury allegedly suffered by the staff member who lodged that complaint is an administrative decision that may adversely affect her or him. As stated above (in consideration 3), the Tribunal has on several occasions held that any staff member who lodges such a complaint is entitled to know whether the person named in the complaint has been found to have committed acts of harassment and, if so, to be informed how the organisation intends to compensate her or him for the material and/or moral injury suffered (see, in this respect, aforementioned Judgments 3965, consideration 9, and 4541, consideration 4). Consequently,

contrary to the JAB's view, the complainant was entitled to challenge in an internal appeal both the decision of 9 November 2017 informing her that the case had been closed because there had been no harassment and the decision of the Director of HRD of 16 January 2018 confirming that initial decision. Section 16.2 of IFAD's Human Resources Policy, which entitles staff members to complain if they have not received proper treatment or satisfaction from the Organisation, also applies to a final decision taken in an investigation into moral harassment. Moreover, under section 9.8 *et seq.* of Chapter 9 of the Implementing Procedures, an internal appeal may be lodged with the JAB, which, under section 9.8.2(i) thereof, is competent to examine "[a]ppeals alleging non-observance, in substance and in form, of the terms of appointment of a staff member, and of such provisions of the Human Resources Policy, the Staff Rules and the [aforementioned] Implementing Procedures as are applicable to the case".

In the present case, since the complainant expressly sought compensation for the harassment to which she allegedly was subjected, she in fact was a staff member concerned by the final decision taken on the matter and was entitled to bring an internal appeal before the JAB, which she did. The JAB could not find that internal appeal irreceivable simply because it considered that the complainant had not been a party to the investigation into the conduct complained of. This is a completely different situation from a case in which the person who lodged the harassment complaint seeks to challenge the disciplinary penalty imposed by the organisation concerned on the perpetrator of the misconduct once it has been established by an investigation, where the Tribunal has held that the complainant had no legitimate interest in impugning the disciplinary penalty imposed (see aforementioned Judgment 4541, consideration 4, which refers to Judgment 3096, consideration 15).

Lastly, the two judgments (Judgments 4207 and 4299) to which IFAD refers in its submissions do not lead the Tribunal to a different conclusion from the one it has reached in the present case. Those two judgments establish a difference in principle between an investigation following a harassment complaint and a disciplinary procedure following a report of misconduct based on an allegation of harassment. In those

two judgments, which, like the present complaint, involve the former scenario, the Tribunal expressly considered the person who lodged the harassment complaint to be one of the parties to the procedure, which is why it found, in those cases, that the complaint filed with it by the person who lodged the harassment complaint was receivable.

The JAB therefore committed an error of law in making the recommendations it did in this case.

7. As to IFAD's contention that the complainant has no cause of action before the Tribunal, it is clear that, for the same reasons *mutatis mutandis* as those already set out in consideration 6 above concerning the receivability of the appeal before the JAB, the complainant does have a cause of action.

On this issue, the Tribunal observes that it is irrelevant that IFAD no longer had any reason to take measures to protect the complainant in the present case since she had left the organisation. That is not what the complainant seeks. She does not claim protection, which would indeed be pointless, but compensation for the material and moral injury she submits she suffered as a result of the conduct in question.

It is evident from the foregoing that the organisation's objection to receivability must be dismissed.

8. The complainant enters two further pleas in respect of the rules applied by the JAB:

- there was a breach of the adversarial principle in that she was never informed of the evidence gathered during the investigation and therefore never had the opportunity, in good time, to make observations, provide evidence or propose ways of proving the inaccuracy of the statements provided by other people, beginning with the person she accused of harassment, her supervisor;
- there was a breach of the right to be informed of the outcome of an internal investigation procedure carried out into allegations of harassment in that she was never able to view the content of the AUO investigation report, even though she requested a copy on 10 November 2017.

9. According to IFAD, the JAB clearly acted within its mandate under the provisions of Chapter 9 of the Implementing Procedures, and the contention that members of the JAB accepted the administration's case while completely ignoring the complainant's arguments and treating her with unwarranted disdain is utterly groundless and unproven. It adds that the email of 9 November 2017, by which the complainant was informed that her internal complaint had been closed, contained a highly detailed statement of the reasons for that decision, and that the complainant never requested a copy of the AUO investigation report, either during the review procedure, in the internal appeal to the JAB or during the proceedings before the Tribunal.

10. The Tribunal has already found in consideration 6 above that the JAB committed an error of law, thereby rendering the entire procedure before it unlawful.

Moreover, contrary to what IFAD submits, on 10 November 2017 the complainant did request a complete copy of the investigation report, including the records of interviews with the persons concerned and witnesses. That request was refused by email of 16 November 2017, that is, before the complainant submitted a request for review. The complainant made the same request in her submissions to the Tribunal.

It is well settled in the Tribunal's case law that an international organisation is bound to grant a request from the staff member concerned for a copy of the report delivered by the investigative body at the end of an investigation into a harassment complaint, even if that means the report must be redacted in order to maintain the confidentiality of some aspects of the investigation, in particular the testimony gathered during that investigation (see, in particular, Judgments 3347, considerations 19 to 21, and 3831, consideration 17, and also Judgments 3995, consideration 5, and 4217, consideration 4).

It follows that the complainant's two further pleas, as summarised in consideration 9 above, are also well founded.

11. As regards the AUO investigation, the complainant, who was only provided with the information contained in the email of 9 November 2017 and the JAB report of 11 September 2018, submits, inter alia, that AUO carried out an incomplete examination of her harassment complaint and committed an error of law in refusing to examine the alleged acts of harassment that were closely linked to the various performance evaluation procedures that she had undergone.

IFAD submits that AUO was correct to consider that a number of the complainant's allegations relating to the manner in which her performance had been assessed fell outside its mandate and would therefore not be examined further, and that it would accordingly limit its examination to only three of the allegations put forward by the complainant in support of her harassment complaint. It adds that the complainant expressly agreed to AUO taking this approach and did not raise this plea in her internal appeal, rendering it irreceivable before the Tribunal.

On this last point, the Tribunal recalls its case law which states that, while a complainant may not submit claims for the first time to the Tribunal if they were not made in the internal appeal procedure, she or he may enter new pleas (see Judgments 4009, under 10, and 4449, under 4).

As regards the contention that the complainant expressed her agreement with AUO's approach, she replies that she had understood that AUO would not review the merits of the various evaluations carried out in her respect, which did not mean that any act committed in the context of her performance evaluation or linked to her evaluations would be disregarded.

In view of these explanations, the Tribunal considers that the complainant had not in fact agreed to the examination of her harassment complaint being confined to just three allegations. Furthermore, although the examination of a harassment complaint does not entail a review of the various performance evaluations carried out by a supervisor of the staff member concerned, she or he is nevertheless entitled to assert that one or more acts of harassment have been committed by that supervisor in connection with those evaluation procedures.

It follows that, in the present case, AUO was wrong to refuse to examine the harassment that was alleged to have taken place in the context of the various evaluations of the complainant's performance.

The AUO investigation is therefore fundamentally flawed.

12. In the light of the foregoing, the Tribunal concludes that the President's decision of 23 October 2018 must be set aside, as must the earlier decisions of 9 November 2017 and 16 January 2018. There is therefore no need to consider the receivability or merits of the complainant's other pleas in the complaint or the rejoinder.

13. At this stage of proceedings, the Tribunal would normally have referred the case back to IFAD in order that the investigation and internal appeal procedure might be reconducted in compliance with due process. However, in view of the time that has passed since the events in question, the complainant's departure from the organisation on 3 April 2017 and the fact that the Tribunal has sufficient information in the present case to enable it to reach an informed decision, the Tribunal considers it more appropriate, in the highly particular circumstances of the case, to deal directly with the merits of the dispute.

14. Firstly, the Tribunal observes that the complainant waited until 2 April 2017, one month after she had ceased any actual work for IFAD and one day before she finally left the Organisation, to lodge a complaint of harassment and abuse of authority against her supervisor (and several other colleagues in her various submissions) on account of, inter alia, events that had allegedly occurred in the context of the various procedures for evaluating her performance since July/August 2015. This appears all the more surprising given that the complainant had previously lodged various internal appeals in connection with those procedures without ever accusing her supervisor of harassment.

15. The complainant has divided her allegations of harassment into three successive periods.

Firstly, she alleges that harassment took place between July 2015 and March/April 2016, mainly in connection with the decision to extend her probationary period by six months and the decision to place her on a second PIP until 3 March 2017. The Tribunal observes that those decisions must be seen in the context of the complainant's performance evaluation for the period from July 2015 to May 2016, and that the complaint filed by the complainant on this matter was dismissed by the Tribunal in Judgment 4543, also delivered in public today, in which it considered that her plea concerning her supervisor's arbitrariness and lack of impartiality was unfounded.

Secondly, she alleges harassment by her supervisor, as well as two other IFAD staff members, during the period from March/April 2016 to August/September 2016, relating to preparations for a specific project to support financial inclusion in Burundi. The complainant submits that the project was unnecessarily delayed owing to various interventions by three people, including her supervisor. Similarly, the project was subjected to excessive monitoring and control by her supervisor and various colleagues. The Tribunal notes, however, that the complainant's allegations are based on mere assertions, devoid of any tangible evidence, whereas it is apparent from documents submitted by IFAD in connection with the complainant's various complaints to the Tribunal that the complainant's supervisor repeatedly explained why he deemed it necessary to intervene in the project preparations.

Thirdly, the complainant also complains of harassment by her supervisor from early September 2016 to early March 2017, which again mainly concerned the manner in which her performance was evaluated during that period. Here again, the Tribunal notes that the complaint concerning this matter was also dismissed by aforementioned Judgment 4543.

16. Regarding the three acts of harassment examined by AUO, the following should be noted, since the flaws identified above with regard to the AUO investigation report do not affect its examination of these three acts.

With regard to the first act, AUO rightly considered that the repeated reference to “post abandonment” in emails and communications from her supervisor did not constitute harassment in the circumstances of the case. AUO found that this term had not been used in its legal sense, had only been used by her supervisor with two other IFAD staff members, also involved in the performance evaluation process, and that it had subsequently been deleted from the various documents concerned.

The same applies to the second act, since the refusal to allow the complainant to take her end-of-year annual leave slightly early and the refusal to grant her a period of compensatory leave as she wished were both based solely on the need to manage the “Burundi portfolio”.

As to the third act, it is apparent from a comparison of the complainant’s statements with other testimony that the complainant’s lack of consent to the audio recording of the discussion on 24 January 2017 concerning the second PIP is not sufficiently established.

17. It is true that, in support of her internal harassment complaint, the complainant accused her supervisor of other abusive behaviour: the inaccurate indication of the number of mission days spent at IFAD headquarters in Rome in her final performance evaluation for 2015; alleged abuse in public, which led to her colleagues also disrespecting her; the intention to upset her by giving her a secondary role during a presentation to the IFAD Administrative Council on 15 April 2016; the manipulation of another colleague against her; a lack of consideration for her work and authority in managing the staff of the IFAD Representative Office in Burundi; blaming her on several occasions for delays or failures for which she was not responsible; the disrespectful termination of her appointment with IFAD; and the assertion that her removal was arranged to allow her to be replaced by someone else.

The Tribunal firstly observes that the complainant had already made most of these allegations during the various performance evaluation procedures, but not in terms of harassment, and that her complaints in this regard have been dismissed by the Tribunal in Judgments 4543, 4544 and 4545, also delivered in public today.

Moreover, most of these allegations are based on the complainant's personal interpretation of the actions in question, whereas numerous explanations were provided by her supervisor, as is clear from various documents in the file.

More fundamentally, the Tribunal fails to see how these various allegations warrant a finding that the complainant was harassed by her supervisor. On this point, it should be noted that the supervisor himself suggested that the complainant's probationary period and then her appointment be extended, whereas, if he had intended to harm her, as the complainant maintains, he could have proposed her dismissal earlier.

18. Lastly, in her rejoinder, the complainant points to various acts that also, in her view, prove that she suffered harassment: firstly, her supervisor's unlawful order that she undertake in writing to remain in her usual duty station of Bujumbura; secondly, her supervisor's decision to extend her probationary period; thirdly, the decisions to place her on PIPs that were not followed up; and, fourthly, criticisms or warnings issued to her in front of third parties.

However, these various actions have been examined by the Tribunal in the preceding considerations. Some too have been considered in the Tribunal's judgments on the complainant's other complaints, also delivered in public today. It is apparent from the Tribunal's assessments of these actions that they cannot be regarded as constituting harassment of the complainant by her supervisor.

19. It is clear from the foregoing that the complainant's harassment complaint against her supervisor was unfounded.

20. Nevertheless, the Tribunal considers that, in view of the numerous errors made in the internal procedure for the examination by IFAD of the complainant's harassment complaint, she should be awarded moral damages in the amount of 10,000 euros.

21. As the complainant succeeds in part, she is entitled to an award of costs, set at 2,000 euros.

DECISION

For the above reasons,

1. The impugned decision of 23 October 2018 is set aside, as are the earlier decisions of 9 November 2017 and 16 January 2018.
2. IFAD shall pay the complainant moral damages in the amount of 10,000 euros.
3. It shall also pay her costs in the amount of 2,000 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 10 May 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ