The Administrative Tribunal,

Considering the complaint filed by Ms F.V. against the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom) on 13 January 2005 and corrected on 10 March, the Commission's reply of 3 June, the complainant's rejoinder of 24 August, and the Commission's surrejoinder of 30 September 2005;

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. The complainant, a French national, who was born in 1967, joined the CTBTO PrepCom on 1 May 2001 as a Radionuclide Officer on a three-year appointment, at grade P.3, in the International Data Centre (IDC) Division.

By memorandum of 16 October 2003 she was informed that pursuant to Administrative Directive 20 (Rev.2) and after consideration by her Division Director and a Personnel Advisory Panel, the Executive Secretary had decided not to extend her appointment when it expired on 30 April 2004. The reason given was unsatisfactory conduct. On 18 October 2003 she was assigned to the Evaluation Section in the Office of the Executive Secretary.

On 16 December 2003 she wrote to the Executive Secretary, seeking a review of the decision not to extend her appointment. The decision was maintained, and on 9 February 2004 she lodged an internal appeal with the Joint Appeals Panel challenging the non-extension. In her statement of appeal she alleged mobbing and harassment on the part of her first-level supervisor, Mr M., in the Radionuclide Section. She asked to be provided with the minutes of the Personnel Advisory Panel and its recommendation. She had also become aware that another document, a "Note for File" drawn up by her supervisor on 22 August 2003, was submitted to the Executive Secretary with the Panel's recommendation and she asked to be given a copy of that too. Also on 9 February 2004, she sent a letter to the Executive Secretary putting forward allegations of mobbing and claiming an indemnification of 250,000 euros. That request, with her consent, became part of her internal appeal.

In its report of 30 September 2004 the Joint Appeals Panel, while finding that the complainant had not been the victim of mobbing or harassment, concluded that the recommendation made by the Personnel Advisory Panel that had met on 20 August 2003 to consider the extension or otherwise of her contract was "tainted by an error of law". The Joint Appeals Panel found that the decision-making process was flawed because the "Note for File" written by the complainant's first-level supervisor on 22 August 2003 at the request of the Personnel Advisory Panel had not been seen by the complainant, and she had thus been denied due process. The note had been submitted to the Executive Secretary along with the Panel's recommendation, without her being able to comment on it. The Joint Appeals Panel recommended that the Executive Secretary should make a new decision, taking into account the complainant's performance appraisals – including the one due for the period up to April 2004. It also recommended removing the contested "Note for File" from her personal file.

By memorandum of 18 October 2004 the complainant was informed that the "Note for File" of 22 August 2003 had been removed from her personnel records, that a performance appraisal report would be prepared for the period from 1 May 2003 to 30 April 2004 by the IDC and the Evaluation Section, and that the Executive Secretary would convene a Personnel Advisory Panel to make a new recommendation on her case. She was also told that action regarding the non-renewal decision was suspended until 30 November 2004. The complainant challenges the decision of 18 October 2004.

Further correspondence ensued. In a letter dated 17 November 2004, the Executive Secretary told the complainant that action on the decision regarding her contract was suspended until 15 January 2005. He said that the performance appraisal report that was being prepared would be part of the material that would be used by the

Personnel Advisory Panel in making a new recommendation on her case. Two appraisal reports were drawn up. The first covered the period from 1 May to 19 October 2003 and was completed by her last supervisor in the IDC Division. The second covered the period from 20 October 2003 to 30 April 2004. By letter of 16 December 2004 the Executive Secretary informed the complainant that the Personnel Advisory Panel had met on 10 December and recommended that her employment not be extended. He said that he had decided to follow that recommendation and that she would accordingly be separated from service on 15 January 2005.

The complainant sought a review of that decision on 10 January 2005, indicating that she intended lodging an appeal with the Tribunal. The Executive Secretary maintained his decision by letter of 11 January. He stated that he would not agree to her submitting the matter to the Tribunal without first appealing to the Joint Appeals Panel. On 27 January she filed a statement of appeal against the decision of 16 December 2004. That internal appeal was pending when she filed her complaint with the Tribunal.

B. The complainant contends that the decision taken in 2003 not to extend her contract was flawed on several grounds. First, as found by the Joint Appeals Panel, it was tainted by an error of law. Secondly, it was tainted by "breach of procedures and breach of due process" including failure to follow relevant Administrative Directives. She argues that there was breach of due process, given that on 20 August 2003 the Personnel Advisory Panel considered new documents that she had not had access to.Thirdly, the decision was tainted by "prejudice, ill-will and hostility", and was hence taken for an improper purpose. Fourthly, it constituted a veiled disciplinary measure without the safeguards of an adversarial process being put in place, and she was thus denied a fair hearing.

In addition, she submits that she was the victim of mobbing and harassment, as was confirmed by a medical report from a psychiatrist she had consulted. She alleges that two successive supervisors, Mr D. and Mr M., were prejudiced against her.Her complaint focuses on actions taken by the second supervisor, who had ultimately recommended the non-renewal of her contract. The defendant organisation, in her opinion, breached its obligation to respect her dignity, and as a result of its actions she suffered injury to her career. Furthermore, she holds that her right to privacy was infringed as confidential medical information was released during the internal appeal procedure to Mr D. and Mr M. who were not authorised to see it.

The complainant seeks the quashing of the challenged decision. In lieu of reinstatement, she seeks a sum equivalent to the pay she would have received if her contract had been extended from 1 May 2004 to 30 April 2006. She claims 50,000 euros in moral damages; material and moral damages in the sum of 125,000 euros for "physical and psychological injury, and medical expenses, occasioned by the mobbing/harassment"; and 10,000 euros in costs.

C. In its reply the Commission holds that the complaint is moot insofar as it relates to the first decision of the Executive Secretary not to extend the complainant's appointment, which was notified to her on 16 October 2003. This is because, following receipt of the Joint Appeals Panel's recommendation, that decision was set aside. Insofar as the complaint relates to the Executive Secretary's second decision not to extend her appointment, which was communicated to her by letter of 16 December 2004, it is irreceivable under Article VII of the Tribunal's Statute as the complainant has failed to exhaust the internal means of redress.

On the merits, it denies that the decision of 16 October 2003 was tainted by any defect apart from the one identified by the Joint Appeals Panel in its report. It was not tainted by prejudice, ill will and hostility as alleged by the complainant, nor did it constitute a hidden disciplinary step. The Commission was not under any obligation to institute disciplinary proceedings against the complainant, and in the circumstances they were not warranted. It points out that the Joint Appeals Panel had found that the complainant was not the victim of mobbing or harassment and it recommended that no indemnification be paid to her. The Executive Secretary was therefore justified in rejecting her claim for indemnification. Even though the complainant has produced an opinion from her psychiatrist on the issue of the alleged mobbing, that opinion cannot replace the Joint Appeals Panel's impartial investigation into the matter. It rebuts her allegations of mobbing and harassment, considering them to be wholly without foundation.

The Commission contends that it acted in good faith towards the complainant and did not treat her with disrespect. It denies infringing her right to privacy by releasing her medical report; she appended it to her statement of appeal without marking it as confidential. Besides which, the doctor's report contained serious allegations against her two successive supervisors, Mr D. and Mr M., and it was released to them so that they could exercise their right of reply.

D. In her rejoinder the complainant develops her pleas. She concedes that the matters she raised in her internal appeal against the decision of 16 December 2004 are not properly before the Tribunal. She maintains that she was the victim of harassment and mobbing.

E. In its surrejoinder the Commission holds that the record of the case amply demonstrates that the complainant's recurring professional difficulties "originated in her own conduct and performance". It argues that it demonstrated its good faith by assigning her to another section and by repeatedly suspending action on the implementation of the original decision not to extend her appointment.

CONSIDERATIONS

1. The complainant, who holds a PhD in nuclear physics, was employed by CTBTO PrepCom from 1 May 2001 as a Radionuclide Officer at grade P.3. She was employed on a three-year fixed-term contract subject to a probationary period of six months. That period was extended for a further six months and her appointment was confirmed on 4 June 2002.

2. On 16 October 2003 the complainant was informed that her contract would not be extended when it expired on 30 April 2004. Having been unsuccessful in obtaining a review of that decision, on 9 February 2004, she lodged an appeal with the Joint Appeals Panel. At the same time she sent a letter to the Executive Secretary, claiming material and moral damages for mobbing and, by agreement, that claim was consolidated with her internal appeal.

3. Following a recommendation from the Joint Appeals Panel, the decision not to extend the complainant's appointment was suspended pending the hearing of her appeal. In a report of 30 September 2004, the Panel recommended that the Executive Secretary make a new decision on the extension of the complainant's appointment and that action on the earlier decision be suspended until that occurred. However, it recommended against the payment of moral damages with respect to the decision not to extend the complainant's contract. It also recommended against the payment of material and moral damages for alleged mobbing as it found that no mobbing and/or harassment had taken place.

4. On 18 October 2004 the complainant was informed that it had been decided to implement the recommendations of the Joint Appeals Panel, including by suspending the operation of the decision of 16 October 2003 until 30 November 2004. The decision of 18 October 2004 is the subject of this complaint. The complainant seeks material damages with respect to the non-extension of her contract; material and moral damages for mobbing/harassment; and costs.

5. So far as the decision of 18 October 2004 relates to the non-extension of the complainant's contract, the Commission argues that the complaint is moot. That is correct to the extent of the claim for material damages. The complainant's contract was, in fact and in law, extended until 15 January 2005 by the combined effect of the decisions to suspend the operation of the decision of 16 October 2003 pending the complainant's appeal and, later, to suspend it until 30 November 2004, and, finally, by a further decision to suspend it until 15 January 2005. Those suspensions did not deprive the earlier decision of 16 October 2003 of continuing legal effect. That occurred when a new decision was made on 16 December 2004 not to extend the complainant's contract beyond 15 January 2005. The material damage, if any, flowing from the non-extension of the complainant's contract is referable to the decision of 16 December 2004 which is the subject of a further internal appeal, and not the earlier decision of 18 October 2004. Accordingly, the claim for material damages for non-extension of the complainant's contract must be dismissed. Whether or not there should be an award of moral damages in relation to the decision may conveniently be considered along with the claim in respect of harassment and/or mobbing.

6. Before turning to the claim for harassment and/or mobbing, it is appropriate to point out that harassment and mobbing are extreme examples of the breach of the duties to provide a safe and secure workplace and, also, to ensure that an employee is treated fairly and with dignity. Save where a claim is so specific that it must either succeed or fail according to its terms, the material advanced in support of a claim of harassment may disclose some other form of harassment, or some lesser breach of one or other of those duties entitling the person in question to an award of damages even though the claim of harassment must fail. In the present case, the Joint Appeals Panel concentrated simply on the question as to whether there had been harassment on the part of, or mobbing organised by the complainant's supervisor, Mr M. In this regard, it found that there was "no proof whatsoever that there was malice aforethought or behaviour [...] that was wrongful, intentional and without justification". Accordingly, it

concluded that the complainant was not subjected to “mobbing or harassment led or organized by her supervisor [Mr M.]” and, on that basis, found that there had been no mobbing and/or harassment. The focus on whether or not there was harassment “led or organized” by Mr M. clearly resulted from an allegation made by the complainant in her appeal to the Joint Appeals Panel. However, the material on which she relied was not restricted to the actions of Mr M.

7. It was clear from a medical report submitted in support of the claim of harassment and/or mobbing that the complainant had encountered problems at a time prior to coming under the supervision of Mr M. Initially, she was supervised by Mr D., who noted in the complainant’s first appraisal report that she could “easily blame [him] for inadequate guidance and leadership” but reported that “there [was] a certain degree of shallowness in her knowledge and experience base”. He also recorded that the analysts, to whom the complainant was supposed to supply expert views, had reported that the opposite process was happening. Somewhat inconsistently, he added that he was “disturbed and guilty” as a result of her recent successes in finding explanations for certain matters that were not previously known to the analysts. He recommended the extension of her probationary period for a further six months. In her remarks on the report, the complainant stated that she had not previously received any comment to the effect that her work was inadequate – neither from the analysts, nor from Mr D. Her second-level supervisor, in his remarks, stated that Mr D. should, within two weeks, prepare a memorandum specifying the complainant’s tasks and performance criteria. That was not done.

8. It appears from a memorandum provided by Mr D. in March 2004 and attached to the Commission’s reply in the proceedings before the Joint Appeals Panel that, shortly before preparing the complainant’s first performance appraisal report, he spoke to two of the analysts who, according to the memorandum, claimed that work being provided to him by the complainant was, in fact, being done by the analysts. These claims were not put to the complainant but, clearly, formed the basis for the negative comments in the report. The memorandum also indicates that, following the performance appraisal report, attitudes were polarised. According to Mr D., one group stopped greeting him and another group spread rumours about the complainant, including claims of sexually explicit behaviour on her part. In the same memorandum, Mr D. reported that “almost the whole [Radionuclide] group reacted against [the complainant]” and that, thereafter, he “did not always have time to take care of her”. The last statement was made because the complainant had claimed that she was left alone during the six months of her extended probationary period.

9. By early 2002, Mr D. had decided to recommend against the confirmation of the complainant’s contract. To this end, he solicited and obtained the support of his immediate supervisor, Mr M., and the IDC Coordinator. In the complainant’s second performance appraisal report, completed on 29 April 2002, Mr D. recorded that she did “not have the actual [as opposed to formal] background to fulfil the duties of her [...] position”. Mr M., who had agreed to support Mr D. in his recommendation that the complainant’s contract not be confirmed but who had not had any significant dealings with the complainant until March 2002, also reported that she was not qualified for the position “either in her knowledge of physics, or her approach to the job”. He stated that she:

“ha[d] not enjoyed good relations with other staff, and ha[d] had quite a destructive influence within the team working environment. This seems to have arisen through her utilising team members against each other in the solution of problems, and sometimes attributing [the] work of others to herself, rather than applying knowledge and initiative of her own.”

He concluded by recommending against the confirmation of the complainant’s appointment.

10. It is clear that in his comments in the complainant’s second performance appraisal report, Mr M. was repeating statements which had been made by the analysts to Mr D. but which the complainant had not been given an opportunity to answer. It is also clear that the complainant was aware that she had been the subject of rumour and gossip for, in her remarks on the report, she referred to “slanderous rumours” which had harmed her self-esteem.

11. For reasons which are not entirely convincing, Mr M. had a change of mind and later recommended the confirmation of the complainant’s contract. Prior to this, the complainant initiated a rebuttal process which, however, was never completed. Instead, there was an investigation involving two staff members each of whom also held a PhD in nuclear physics and who reported favourably on the complainant’s qualifications and work. Thereafter, but without reference to the investigation, Mr M. stated in a memorandum dated 4 June 2002 that he had been closely managing the work of the complainant, that she had “modified her behaviour and deportment

considerably" and that she "[had] produced some good work which was certainly of a level commensurate with a P3 appointment". He also said that there was "no doubt that the [complainant's] first year was difficult". He added that, in his opinion, "the problems arising in the first year were the result of a lack of understanding and recognition of requirements (from both [the complainant] and management)" and concluded by saying that she would remain under his day-to-day supervision working on radionuclide monitoring operations.

12. Mr M. reported on 11 September 2002 that all aspects of the complainant's work in the past three months had been addressed competently. Shortly afterwards, on 31 October, he called a meeting with the complainant and the IDC Coordinator during which he complained of shortcomings "evident during [the complainant's] first six months" and warned that, in the future, "details of deficiencies [would] be recorded" and that, if improvements were not forthcoming, the extension of her contract would be in serious doubt. Later that week the complainant sought medical attention.

13. The only matter recorded against the complainant in the period following the meeting of 31 October 2002 related to a Christmas party at which, it was said, the complainant had spoken of some monitoring problem "within the hearing of others". In an e-mail relating to that matter, Mr M. acknowledged that he had not been present but said "the fact that some people in the team were upset is enough for me to believe there is truth in the rumour". Subsequent quarterly reports for the periods ending 31 December 2002 and 31 March 2003 were favourable, it being said in the former that "a valuable and most important contribution [...] ha[d] been made" and, in the latter, that the complainant's work "had been well done".

14. In the complainant's performance appraisal report for the period 1 May 2002 to 30 April 2003, Mr M. observed that "it ha[d] been a difficult year after a bad start, during which opinions of [the complainant] oscillated somewhat". He recorded that "personality differences remain[ed]" but that "the damaging effect [...] on the team nature of [the] operations [...] now seems to be past". He concluded by saying that "the value of [the complainant's] contribution [was] beyond doubt".

15. On 9 July 2003 Mr M. called a meeting to announce a new software development which he, Mr D. and another officer, had been working on. The complainant was not convinced that the software could do all that was claimed and, when she voiced her concerns at the meeting, was told to "shut up". Later, Mr M. took her aside and asked her not to discuss her misgivings relating to the effectiveness of the new software with anyone but him.

16. Following a favourable report from Mr M., a recommendation was made by the Director of the IDC Division on 23 July 2003 for the extension of the complainant's contract. A Personnel Advisory Panel met to consider that recommendation the following day but, for reasons which are not clear, deferred its consideration. In its reply the Commission says only that the Panel deferred its consideration "[o]wing to concerns regarding the complainant's suitability for extension". Within days of the initial meeting of the Personnel Advisory Panel, it was reported to Mr M. that the complainant had been criticising the software programme. According to his subsequent report, Mr M. saw this as "an act of sabotage" and as "a betrayal of trust, loyalty and team spirit". He immediately decided that the complainant "would have to be isolated from the rest of the Section in order to prevent further deterioration in the situation".

17. At a meeting held in the presence of the IDC Coordinator on 28 July 2003, Mr M. handed the complainant a memorandum in which it was said that he "no longer consider[ed her] to be a member of the radionuclide team, and [was] seeking ways to relieve [her] of all [her] duties". The meeting was quite heated and the complainant states that she was merely expressing her opinion and was not opposed to the development of the new software. The IDC Coordinator suggested another meeting which took place on 31 July 2003.

18. At the meeting on 31 July, Mr M. reiterated his claim of "sabotage". The complainant admitted that she had criticised the software but denied any intention to sabotage the programme. She apologised for any harm that had been done, saying that it was unintentional, and agreed that her behaviour had been "inadequate". The meeting concluded with "the course of action [left] open". Later that day, Mr M. sent an e-mail to everyone in the radionuclide team, including the complainant, inviting them to drinks that evening. He admitted that they could not pretend that the recent events had not happened but that they were "mature adults and [had] to continue working together". As it happened, the complainant did not attend the social function and was on leave from 2 August, returning to work on 18 August 2003.

19. Two things occurred during the complainant's leave. The first was that the Staff Council proposed to the

Executive Secretary that the complainant be transferred to the Evaluation Section. Mr M. objected to this course, saying that "she [would] still be able to cause mischief in radionuclides, and bring her incompetence into play" and that the IDC Division would lose a badly needed post. The second thing that happened was that Mr M. and Mr D. approached the Director of the IDC Division and reported that the complainant had engaged in acts of "sabotage" and that she had the potential to embarrass the Commission if her employment were maintained.

20. When the complainant returned from leave on 18 August, she was told by Mr M. in an e-mail, that she was not to do anything "in connection with stations" and not to send any e-mails within the Section. She was also informed that "there [was] nothing that [she was] required to do work-wise". Later that day, Mr M. sent an e-mail requesting her to "remain distant from the rest of the team" and informing her that her work "ha[d] been taken over by others". He suggested that she "might begin work on a paper on cosmogenic nuclides". It is clear that for the next week, the complainant was, in effect, isolated from all other persons in the Section.

21. The day following the complainant's return from leave, the Director of the IDC Division wrote a memorandum to the Director of Administration withdrawing his recommendation for an extension of her contract. He said in it that Mr M. "not unreasonably" considered the complainant's discussion of the new software as "sabotage" and reported that "[h]er relationships with all other staff within the Section ha[d] now been completely broken". He concluded by saying that it would be "inadvisable for her to work in areas where there is a potential to cause embarrassment for the [organisation], as she has already done on more than one occasion". He did not specify how or when such embarrassment had been caused. The Personnel Advisory Panel met the next day. Mr M. attended the meeting of the Panel and, according to the report of the Joint Appeals Panel, "argued strongly against the [complainant's] extension of contract".

22. Shortly after the further meeting of the Personnel Advisory Panel and, apparently, at the Panel's request, Mr M. prepared a "Note for File" that was then transmitted to the Panel and subsequently attached to its final report recommending against the extension of the complainant's appointment. It was by reason of the introduction of that note into the Personnel Advisory Panel's proceedings that the Joint Appeals Panel recommended that the decision of 16 October 2003 not to extend the complainant's contract be set aside. The "Note for File" has, in accordance with its further recommendation, been removed from her personnel file. In that document, Mr M. stated, amongst other things, that the complainant had "demonstrated a serious lack of integrity", claiming that the officers who had interviewed her for her initial appointment had been "inaccurately and misleadingly informed" by her, as their error of judgement regarding her suitability was only explicable on that basis. He also stated that the complainant had been a public embarrassment in that she had "disported herself in an entirely inappropriate manner in front of [working group] delegates". He also said that she had caused "considerable embarrassment and bad feelings amongst fellow staff members through unrestrained expression of misleading or false claims".

23. The complainant's health deteriorated in the week following her return to work and she proceeded on certified sick leave from 27 August until 5 November 2003. During this period, she was under the care of Dr S.-M., a specialist in psychiatry and neurology. She diagnosed stress depression resulting from harassment and an earlier miscarriage. She did not relate the miscarriage to the harassment. Dr S.-M. provided a lengthy report, dated 2 February 2004, in which she referred to several articles identifying patterns of workplace harassment and which was later presented to the Joint Appeals Panel. The report was provided by the Administration to Mr D. and Mr M. whose comments on the report were also provided to the Panel.

24. Before turning to the report of the Joint Appeals Panel, it is necessary to note that the tyres of the complainant's vehicle were damaged in the office car park on three occasions in 2003, the first being on 18 August when she returned to work and the other two being during the period of her sick leave. There were two similar events in 2004, one occurring shortly before and the other during the hearing of her appeal. Additionally, in early September 2004, she received some anonymous phone calls at home and, also, an anonymous letter in the Evaluation Section to which she had been transferred in October 2003. The letter was in an internal envelope. She sought an investigation of these matters in September 2004. The question of vandalism was apparently treated as resolved when it was arranged for her car to be parked in a secure parking area. The request for investigation of the anonymous letter was formally withdrawn after it was ascertained that the relevant mail officer had no recollection of the envelope involved.

25. As already indicated, the Joint Appeals Panel found that the complainant had not been the victim of harassment and mobbing "led or organized" by Mr M. and, therefore, that there had not been mobbing and/or harassment. The complainant's appeal was not a case where the claim made was so specific or the material relied

upon so confined to the actions of Mr M. that it could be said that, because there was no harassment or mobbing "led or organized" by him, it might properly be concluded in the circumstances that no harassment or mobbing had taken place. However, there were more fundamental errors of law in the approach of the Panel. It proceeded on the basis that it was necessary to establish an intention to "intimidate, insult, harass, abuse, discriminate or humiliate a colleague" and concluded that there must be "bad faith or prejudice or other malicious intent" before that intention could be inferred. That is not correct. Harassment and mobbing do not require any such intent. However, behaviour will not be characterised as harassment or mobbing if there is a reasonable explanation for the conduct in question. (See Judgment 2370, under 17.) On the other hand, an explanation which is *prima facie* reasonable may be rejected if there is evidence of ill will or prejudice or if the behaviour in question is disproportionate to the matter which is said to have prompted the course taken.

26. The Joint Appeals Panel fell into another error by analysing certain of the incidents upon which the complainant relied as separate or independent events without considering them in their overall context. Thus, for example, the Panel accepted that "some gossip and rumours existed in the Radionuclide Section" but said that the complainant was "not more a target [...] than other staff". So, too, it accepted that the complainant's car had been vandalised but said "there [was] no indication whatsoever that these incidents ha[d] anything to do with [Mr M.] or with the organization". Again, her allegations that she was humiliated in front of others were treated in isolation, it being said that the "shut up" remark was an "isolated incident" and that the two meetings in which the IDC Coordinator participated (held on 31 October 2002 and 28 July 2003, at both of which the complainant was reduced to tears) "were not meant to humiliate". And so far as the complainant asserted that her fellow workers had been forbidden to have contact with her, the Panel said that this was not established, "at least for the period prior to July 2003". As to the events by which the complainant was isolated thereafter, the Panel accepted that they were the result of "a managerial decision to make sure that the work of the team was not disrupted". The Panel did not otherwise concern itself with the events of late July and early August 2003 in relation to the claim of harassment.

27. It follows from the foregoing that the approach of the Joint Appeals Panel to the question of harassment and mobbing was seriously flawed. Because the decision of 18 October 2004 relating to those claims was based upon the report of the Joint Appeals Panel, the decision must, to that extent, be set aside. A question arises as to the course that should now be taken. Unusually, the material is such as to enable the Tribunal to decide that issue for itself, primarily by reference to the denial of due process.

28. It is clear from the reports and memoranda prepared by Mr D. and Mr M., respectively, in answer to the complainant's claim of harassment and, by Mr M., in relation to the question of the extension of her contract, that they regarded her behaviour and tendency to speak to her fellow workers as a disruptive influence, both in terms of work production and team spirit. Clearly, that was offered by Mr M. as the explanation for his actions. To a considerable extent, that explanation may be accepted although it should be noted that, in the relevant performance appraisal report for the subsequent period during which the complainant worked in the Evaluation Section, it was said that she "fitted in and got along well with the rest of the [...] team". However, it is also clear from the above-mentioned reports and memoranda that Mr D. was prepared to accept the statements of others relating to the complainant without investigating their accuracy and without giving the complainant an opportunity to answer what was said against her. She was thus denied due process. He was also prepared to repeat those statements to others which only aggravated that denial. This was the case even after the complainant ceased to be under his supervision. Thus, in his memorandum of 2 March 2004 attached to the Administration's reply in the internal appeal proceedings, he indicated that he had relayed some of the matters that had been reported to him concerning the complainant to a person at a university where the complainant had studied, and then reported that he had been told that the complainant, during her course there, had used the same method "many times". In any event, it is clear from that same memorandum that, by the end of her first six months under his supervision, "almost the whole radionuclides group [had] reacted against [the complainant]", with some staff members spreading gossip about her. On any view, the period following the complainant's first appraisal report was one which was not conducive to good relationships and there existed a duty, which was not then discharged, to ensure that there was a healthy working environment and that the complainant was treated fairly and with dignity. This alone may not, perhaps, suffice to find for the complainant, but seen in the light of the many procedural errors and inequities that were committed, it certainly adds merit to her claim.

29. One other matter that emerges from the documents before the Tribunal is that Mr M.'s actions with respect to the complainant were far from consistent and, to her detriment, often contradictory. At times he praised her work and at other times reacted extremely negatively towards her, on one occasion berating her in the presence of the IDC Coordinator. That behaviour was of a kind that was likely to cause stress and humiliation. Moreover, even if

the complainant was a disruptive influence and the analysts asked that she be kept away from them, acquiescence in that course was not an appropriate response, particularly as she was not given an opportunity to answer their claims. Moreover, that course was certain to result in isolation and had the potential, in a situation in which gossip was rife and opinions polarised, to lead to further hostility towards the complainant. Lastly, the behaviour of Mr M. on 28 July 2003 and thereafter was an extravagant overreaction to the complainant's criticism of the new software programme. By no means could the complainant's actions be described as "sabotage". And no explanation has ever been proffered as to why criticism of the software programme required that the complainant be relieved of her duties, or even why that course was desirable.

30. It is clear that, from 28 July 2003 onwards, the attitude of Mr M. towards the complainant was one of open hostility. His attitude had changed to the point that he would accept no explanation of or apology for her behaviour and was even prepared to believe that she must have lied to the persons who had interviewed her for her appointment on the basis that their error of judgement could not otherwise be explained. This again was an unsubstantiated opinion in respect of which the complainant was denied due process. Whatever may have been the position before 18 August 2003 – and it was by no means a situation in which the complainant's dignity had always been respected – it had by then escalated to a point which is properly described as harassment resulting, in significant part, from the absence of due process. By then, the complainant was humiliated and isolated from her colleagues. Moreover, it is impossible to conclude that the vandalism of the complainant's car on the very day that she returned from leave was mere coincidence, particularly when similar events occurred shortly before and during her internal appeal. Nor is it possible to conclude that the offensive and anonymous letter, which was delivered at or about the same time as the last act of vandalism, was unrelated to the overall situation. Rather, the proper conclusion is that the complainant had been so isolated and demonised that, even after she was transferred to the Evaluation Section, someone was prepared to engage in these vindictive acts. The duty of the Administration to provide a safe and adequate environment was once again seriously violated.

31. So far as the impugned decision relates to the earlier decision not to extend the complainant's contract, it is necessary to note that the proceedings of the Personnel Advisory Panel upon which that earlier decision was based were seriously flawed, again involving denial of due process. Serious allegations were put before the Panel, both by the Director of the IDC Division and Mr M., which extended beyond anything contained in the performance evaluation reports. The complainant was never given an opportunity to answer those claims. It is correct, as the Commission contends in its pleadings, that it was under no obligation to institute disciplinary action for misconduct in respect of the matters put against the complainant (see Judgment 1590). However, the duty to act fairly and in good faith required that those allegations not be put to the Personnel Advisory Panel unless they had been properly investigated and the complainant given an opportunity to answer them. In the present case, neither occurred. It is unnecessary to consider whether there were other irregularities associated with the proceedings of the Personnel Advisory Panel: if there were, they were subsumed by the serious failure of due process and want of fairness and good faith involved in advancing serious allegations that had not been properly investigated.

32. One other matter must be mentioned. Although the complainant provided the report of Dr S.-M. to the Joint Appeals Panel, that did not amount to implied authorisation for it to be given to Mr D. and Mr M. for their comments (see Judgment 2271, under 7). There were other means available to the Administration to obtain answers from Mr D. and Mr M. to the claims made by the complainant. The disclosure to them of the medical report was a serious breach of confidence and one that, in the circumstances, was particularly insensitive.

33. To the extent that the decision of 18 October 2004 relates to the claims for harassment and for moral damages in respect of the decision not to extend the complainant's contract, that decision should be set aside. Instead, the Commission should pay the complainant material and moral damages in the sum of 35,000 euros.

DECISION

For the above reasons,

1. To the extent that it related to the claims for harassment and for moral damages with respect to the earlier decision of 16 October 2003 not to extend the complainant's contract, the decision of 18 October 2004 is set aside.

2. The Commission shall pay the complainant material and moral damages totalling 35,000 euros.

3. It shall also pay her costs in the sum of 5,000 euros.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.