The Administrative Tribunal,

Considering the second complaint filed by Mrs C. E. S. against the World Health Organization (WHO) on 12 May 2006 and corrected on 16 June 2006, the WHO's reply of 15 September 2006, the complainant's rejoinder of 21 November 2006 and the Organization's surrejoinder of 21 February 2007;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is a German national born in 1964. Having worked for the WHO in 1998 and 1999 on secondment from the British National Health Service, she was appointed on 1 September 2000 to the post of Medical Officer, at grade P.5, in the Global Programme on Evidence for Health Policy (GPE) in the Evidence and Information for Policy Cluster (EIP). As from September 2003 she was responsible for the management of the secretariat function of the Health Leadership Service (HLS) initiative in the EIP Cluster under the direct supervision of the Assistant Director-General of EIP. At the end of 2003 she also assumed the function of Coordinator of the Leadership, Management and Fellowships (LMF) Unit within the Department of Human Resources for Health (HRH). She was confirmed as Coordinator in June 2005 with retroactive effect from September 2004. Following a reorganisation of the EIP Cluster, HLS was transferred to HRH, the Director of which was Mr A. As a result, on 1 January 2004, Mr A. became the complainant's first-level supervisor and the Assistant Director-General of EIP, her second-level supervisor.

In March 2004 the complainant was offered a two-year extension of her fixed-term contract, which was due to end on 31 August 2004. Being eligible for a five-year extension under the relevant rules, she asked Mr A. to explain why he had merely proposed a two-year extension. After having discussed the matter with Mr A.,she informed him in an e-mail dated 14 April 2004 that she was inclined not to sign the proposed two-year extension of her contract because she perceived it to constitute unequal treatment, given that at least one staff member in HRH had been granted a five-year extension at the earliest possible stage, and also because she felt it was based on personal reasons rather than the criteria stipulated in the relevant rules. This e-mail was copied to the Assistant Director-General of EIP. It was subsequently agreed that the complainant should be granted a five-year extension.

In June 2004 the complainant reported to the Assistant Director-General of EIP, and to the Director of Human Resources Services that she had experienced harassing behaviour on the part of Mr A. Around the same time Ms X and Ms Y, both of whom were working in Mr A.'s department, complained to the Director of Human Resources Services of what they perceived as inappropriate behaviour on the part of Mr A. towards them. On a number of occasions the complainant also told the Human Resources Officer that she found certain comments and gestures by Mr A. to be offensive and sought her advice on the complaint procedure. In a memorandum to the Assistant Director-General of EIP, dated 25 June 2004, the complainant contended that she had been subjected to acts of sexual harassment by Mr A. and requested that the supervisory authority over herself and her team be transferred to a different senior manager at the earliest possible opportunity.

On 14 July 2004 the complainant lodged a formal complaint of sexual harassment against Mr A. She alleged in particular that Mr A. had asked her in a suggestive tone when she would invite him for coffee and that he had made a remark concerning her perfume in a seductive voice; that his proposal for a two-year extension of her contract was motivated by personal rather than professional reasons; and that he had stroked her forearm with his finger outside a meeting room at the Palais des Nations. The complainant also relied on alleged incidents involving other women, two of whom submitted statements in support of her complaint.

On 27 July 2004 Mr A. resigned from the Organization. Soon thereafter, on 17 September 2004, he was provided with a copy of the harassment complaint brought against him and was informed of his right to submit a written

response within 30 days. He did so on 5 October 2004.

In the months that followed his resignation, four other officials succeeded him as the complainant's supervisor. Throughout this time the Assistant Director-General of EIP, remained the complainant's second-level supervisor. On 15 April 2006 the complainant was transferred, at her request, to the Department of Food Safety, Zoonoses and Foodborne Diseases (FOS), in the Sustainable Development and Healthy Environments Cluster (SDE) as a Medical Officer. Although she retained her P.5 grade, as a result of this transfer, she relinquished her functions as Coordinator of the LMF Unit.

Pursuant to the provisions of Cluster Notes 2001/9 and 2001/13 concerning, respectively, the WHO Policy on Harassment and the Formal Process for Harassment Allegations for Headquarters, a Grievance Panel to investigate the complaint was constituted on 22 April 2005. It held its first meeting on 4 May 2005. In the period between 15 July and 8 December 2005 the Panel conducted interviews with 24 individuals. In its report, which was submitted to the Director-General on 30 January 2006, the Panel found that the complainant had failed to substantiate her allegations of sexual harassment and that she had misrepresented some of the facts on which these allegations were based, and concluded that Mr A. had not harassed the complainant "in any sense whatsoever, including harassment without sexual content or motive". It recommended in particular that the case against Mr A. be closed, that measures to restore his reputation be taken and that any formal or informal restriction on him working with the Organization be lifted. By a letter of 14 February 2006 the Director-General informed the complainant that he endorsed the Panel's conclusion that she had not been "sexually harassed or harassed by Mr [A.]" and that the case against him should be closed. That is the impugned decision.

B. The complainant alleges that the Panel's report is fundamentally flawed in several respects and that the Director-General's decision, which is based upon it, suffers from the same flaws. In support of her allegations she puts forward four main pleas.

First, she argues that the report contains errors of fact, which consist in the misrepresentation and selective reporting of facts, the inaccurate reporting of witness statements and the dismissal of important elements of statements, the drawing of arbitrary conclusions not supported by evidence, and the accusations that she sought to take advantage of her position as Staff Committee member and that she wrongly spoke to colleagues about Mr A.'s conduct. She submits that the Panel chose to interpret each event in a way which was the least favourable to her, and she protests against the Panel's lack of a sound understanding of sexual harassment. Moreover, the complainant maintains that she gave Mr A. a clear verbal warning, telling him exactly what behaviour she considered inappropriate, and that Mr A.'s statement that "[his] antennas were raised" gives testimony to the fact. On three occasions, she says, prior to filing a formal harassment complaint, she had notified the Assistant Director-General of EIP, her second-level supervisor, that Mr A.'s behaviour had caused her stress and physical injury. She contests the Panel's finding that in offering her a two-year contract extension while stating that he would be happy to grant her a five-year extension in two years time "if [they got] on well", Mr A. was not suggesting a *quid pro quo* but was merely acting within his legitimate managerial authority. In the complainant's view this conclusion is clearly erroneous because it suggests that the personal relationship between herself and Mr A. should determine her contractual situation while failing to recognise the subtlety of sexual harassment.

Second, the complainant submits that the Panel committed errors of law as well as procedural errors. She points to the fact that according to the WHO Policy on Harassment "intent" is not a pre-requisite for establishing sexual harassment and asserts that the Panel introduced false legal standards by requiring her to demonstrate not only "intent" on the part of the harasser but also a "reasonable warning" given by her to Mr A. She emphasises that "harassment does not depend on warning, or intent, but is an objective evaluation of a subjectively felt condition". She claims that the Panel interviewed and relied on the testimonies of persons who had no knowledge of the situation, while minimising the significance of the testimonies of the two women who submitted statements in support of her grievance. Contrary to what it contended, the Panel did not call for interview all the women who had been subjected to harassment and whose testimonies would have been crucial in demonstrating the existence of a pattern of behaviour indicative of sexual harassment. Moreover, it failed to recognise bias on the part of senior officials as well as witness intimidation. The complainant further sees a serious procedural flaw in the fact that the Assistant Director-General of EIP, who is one of the main witnesses, is the third-level supervisor of the Panel member by whom he was interviewed. This, she claims, is a clear case of conflict of interest. She contends that the Panel did not give her any opportunity to refute or explain a significant amount of evidence adduced against her and, by doing so, denied her the right of reply. She is astounded by the one-sidedness of the Panel's conclusions and argues that, having heard two senior female managers complaining of sexual harassment by the same manager,

the Panel should at the very least have inferred that Mr A.'s conduct was perceived as sexual harassment.

Third, the complainant contends that the Panel relied on irrelevant facts while ignoring relevant ones, as a result of which its report is improperly motivated, biased and prejudiced. She therefore considers that the impugned decision, being based upon such a report, constitutes an abuse of authority and must therefore be set aside.

Lastly, she claims that the report has been manipulated in that directions were given to tailor the evidence against her. This, coupled with a series of administrative irregularities constitutes "clear cut evidence of harassment and absence of due process". She contends that, as a direct consequence of the Organization's failure to deal with her initial complaint promptly and adequately and to prevent the irregular dissemination of the Panel's report, she has suffered a defamatory attack on her reputation and additional harassment by officials who succeeded Mr A. as her supervisor, and from certain other colleagues sympathetic towards him.

The complainant asks the Tribunal to set aside the impugned decision and to recognise that she was the victim of sexual harassment. She claims compensation for being "forced to forfeit" her position as Coordinator of the LMF Unit "due to the stressful environment in which she was obliged to work", and for the defamatory effect the Panel's report has had on her professional reputation, essentially as a result of the Panel's speculative comments over her motivation for filing a complaint of sexual harassment.

C. The Organization replies that the Director-General's decision is lawful as it was made on the basis of a report which was the product of a thorough investigation. Before introducing its arguments on the merits, it asks the Tribunal to declare the complaint irreceivable insofar as it relates to the treatment the complainant alleges to have received from officials who succeeded Mr A. as her supervisor, and from certain other WHO staff members. It asserts that only the issues forming the subject of the initial complaint – in respect of which internal means of redress have been exhausted – are properly before the Tribunal, namely the question of whether the complainant was sexually harassed by Mr A., the adequacy of the investigation by the Panel, the lawfulness of the Director-General's decision and the claim for compensation in connection with that decision. For the same reasons the Organization asks the Tribunal to declare irreceivable the complainant's claim for compensation for being "forced to forfeit her unit Coordinator position, due to the stressful environment in which she was obliged to work".

The WHO submits that, contrary to the complainant's contention, the Panel did not require evidence that Mr A. intended to harass the complainant so that it could establish that harassment had occurred. Having found that Mr A.'s conduct did not, *prima facie*, constitute sexual harassment as defined in Cluster Note 2001/9, the Panel considered it relevant to examine whether there was evidence of "intent" on the part of Mr A. to harass, whether the complainant had clearly informed him that she found his behaviour offensive, and whether there was "subsequent transgression" on his part. "Intent", "fair warning" and "transgression" were not applied as absolute tests for determining whether sexual harassment had occurred but rather were considered as relevant factors.

The Organization dismisses the complainant's argument that the Panel misrepresented, minimised or disregarded testimonies or evidence supporting the complainant's allegations. In spite of the fact that the central witnesses called by the complainant, Ms X and Ms Y, were not present at the time of the events which allegedly constituted sexual harassment, the Panel gave their testimonies careful consideration, both in respect of incidents which allegedly occurred between themselves and Mr A., as well as in the context of examining the existence of a pattern of behaviour. It reached a reasoned conclusion that there was no such pattern. The Organization rejects the allegation that because witnesses were intimidated they could not tell the truth. What the complainant calls errors of fact are in reality differences in the recollection and interpretation of events between herself and other witnesses. It submits that each of the complainant's submissions was examined in light of witness testimony and against documentary evidence in a rigorous and objective manner.

Furthermore, the Organization denies that the Panel interviewed persons who had no knowledge of the situation and that important witnesses were not called. It points out that, although the complainant refused to name witnesses, she did present the Panel with a copy of a staff roster for the Department of HRH, on which she had highlighted the names of women who, she alleged, had been sexually harassed by Mr A. Of the eight women thus identified by the complainant, the Panel was able to interview six. With the exception of Ms X and Ms Y, none of these women was able to provide evidence to support the complainant's allegations.

In addition, the Organization refutes the complainant's assertion that the Panel was biased and that it denied her the right of reply. It emphasises that the complainant had ample opportunity to state her case and that due process

required the Panel to treat both parties in an equal manner, which it did. Regarding the alleged conflict of interest of one of the Panel members, it observes that when the complainant was informed of the composition of the Panel she raised no objection. Furthermore, the WHO structure does not envisage "third-level" supervisors, and the member in question had no regular dealings with the Assistant Director-General of EIP.

The Organization submits that the delay in the proceedings was due to matters which were beyond its control, such as the complainant's request to involve an external expert and the complexity of the investigation. While acknowledging the need for prompt resolution of harassment complaints, it refers to Judgment 2225 in which the Tribunal stated that "[t]he time limits specified in Cluster Note 2001/13 are not mandatory".

The WHO rejects as unfounded the complainant's allegation that she was the victim of a "defamatory attack upon her character, as part of institutional harassment" because of her leading role in staff association activities and the distribution of the Panel's report to an "unknown number of persons". With regard to the circulation of the report, it adds that it is within the Director-General's prerogative to consult senior staff members and that by doing so he merely fulfilled his duty as a decision-maker.

Regarding the complainant's request for compensation for being "forced to forfeit her unit Coordinator position", it observes that her appointment to a Coordinator position did not create an entitlement. The complainant was not promoted when she was designated as a Coordinator, nor was she demoted when, upon her request, she was transferred to FOS as a Medical Officer. Concerning the complainant's claim for compensation for the allegedly defamatory effect the report has had upon her professional reputation, in particular the comments over her motivation for filing a harassment complaint, the Organization asserts that the Administration treated the report in the strictest confidence, adding that the complainant offers no evidence of any defamatory effect to her reputation.

D. In her rejoinder the complainant contends that she has been the victim of a pattern of harassment: the harassment subsequent to Mr A.'s resignation, her forced transfer and resulting forfeiture of her Coordinator position and the damage to her reputation are directly linked to her harassment complaint against Mr A. Hence, the complaint and the request for compensation are receivable in their entirety. She was forced to seek a transfer to escape the "intolerable work environment" which further damaged her health. In her view her transfer amounted to demotion and resulted in the loss of her role as Coordinator and all related supervisory, managerial and budgetary responsibilities.

E. In its surrejoinder the Organization maintains its objection to the receivability of the complaint insofar as it concerns the actions of persons who succeeded Mr A. as the complainant's supervisor and other WHO staff members and the claim for compensation for her "forced transfer".

It submits that what the complainant describes as "on-going harassment" by supervisors who succeeded Mr A. was in fact a series of disagreements concerning the management of the HLS initiative and the complainant's professional conduct and performance. As for the allegation that she was forced to transfer to FOS, it emphasises that the complainant chose to move with her post to a different department. It argues that this transfer did not constitute demotion; she had been informed that in the event of a change of duties she might not retain her title of "Coordinator". Most importantly she maintained her P.5 grade after the transfer.

CONSIDERATIONS

1. The complainant, who had worked for the WHO in different capacities in 1998 and 1999, was appointed on a fixed-term contract as Medical Officer at grade P.5 in the GPE in 2000. In 2003 she was appointed Coordinator of the HLS initiative and, in 2004, Coordinator of the LMF Unit. She remained at grade P.5. In April 2006 she was transferred to the post of Medical Officer in FOS. As a result of that transfer, which she did not contest, she ceased to be a Coordinator but retained her P.5 grade.

2. In late 2003 the supervision of the HLS initiative was transferred to the Director of HRH. According to the complainant, her new first-level supervisor, Mr A., had previously made flirtatious remarks to her which she had either rebuffed or ignored. After she was placed under his supervision, certain events occurred which resulted in the complainant lodging a formal complaint of sexual harassment against him in July 2004. That complaint was not solely concerned with events relating to the complainant. It referred to events involving her secretary, Ms Z, and two other persons, Ms X and Ms Y, both of whom filed statements in support of the complainant. Additionally, the

complainant alleged that six other women who did not wish to be identified had also experienced harassment on the part of Mr A. Save in relation to the six women who, it was said, did not wish to be identified, it is not disputed that a number of the events, or something very like them, did occur. The question raised by this complaint is whether they constituted sexual harassment.

3. The Grievance Panel that was constituted in April 2005 investigated the complainant's claim of sexual harassment and submitted a lengthy report on 30 January 2006. It concluded that Mr A. "did not harass [the complainant] in any sense whatsoever, including harassment without sexual content or motive". On 14 February 2006 the Director-General informed the complainant that he accepted the Panel's finding to that effect and that he had decided that the case against Mr A. should be closed. That is the impugned decision.

4. The complainant asks the Tribunal to set aside the impugned decision and make a finding that she was the victim of sexual harassment. Additionally, she seeks compensation for having relinquished her position as "unit Coordinator" which, she claims, she was forced to do as a result of her stressful work environment. She also seeks compensation for the defamatory effect of the Grievance Panel's report on her professional reputation.

5. The WHO objects that the claim for compensation with respect to the relinquishment of the complainant's position as Coordinator is not receivable because the decision in that regard was not challenged within time and the claim is an expansion of her original claim. It is correct that the complainant cannot challenge the decision that resulted in her transfer to her present position. However, if the complainant was the victim of sexual harassment and her claim was wrongly rejected, she is entitled to damages for what occurred and for anything that was its natural and probable consequence. However, that aspect of the case can be considered later.

6. Before turning to the arguments advanced by the complainant, it is convenient to note the findings made by the Grievance Panel. First, it found that Mr A.:

· "made remarks suggesting that [she] should invite him for coffee or commenting on her perfume, or words to that effect";

· "offered [her] a two-year extension to her contract and […] suggested a five-year renewal would be considered after determining whether [she] and her programme were able to integrate successfully into HRH, or words to that effect";

· "touched [her] arm or shoulder outside […] a […] meeting at the [United Nations] Palais";

· "asked [her] secretary what she was going to get him for Valentine's Day";

· "held Ms [X's] hand in his apartment and […] embraced and kissed Ms [Y]".

Ms X and Ms Y made statements with respect to the above matters which the Panel treated as relevant to the question whether there was a pattern of harassing behaviour on the part of Mr A.

7. The factual findings made by the Panel repeat, apparently verbatim, the admissions made by Mr A. who, according to the report, denied the interpretation placed on the events above outlined. He also denied that "any of these actions were performed with harassing intent". It is difficult to conceive that handholding, embracing and kissing of female staff members by a senior male colleague is capable of more than one interpretation. However, the Panel found that the behaviour in question "was not obviously harassing and, critically, was never challenged". Because of that and because there was no denial or threat of denial of work-related benefits and neither Ms X nor Ms Y was "subjected to a hostile, intimidating or abusive work environment", the Panel found that there was no pattern of harassing behaviour. Those remarks indicate a misunderstanding of the nature of sexual harassment. Be that as it may, there are other difficulties with the report and findings of the Grievance Panel.

8. In Judgment 2552 the Tribunal pointed out that an accusation of harassment "requires that an international organisation both investigate the matter thoroughly and accord full due process and protection to the person accused". Its duty to a person who makes a claim of harassment requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context (see Judgment 2524), that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed not be stigmatised or victimised on that account (see Judgment 1376).

9. The complainant's claim of harassment which was lodged in July 2004 was investigated neither promptly nor thoroughly. The Panel was not constituted until April 2005 and did not hold its first interview until July of that year, that is one year after the filing of the complaint. The report emerged some six months later. It is true that the Panel interviewed many witnesses and the members of the Panel had to attend to their normal duties while conducting the investigation. However, the delay in constituting the Panel was egregious and had the potential to exacerbate the situation in which complainant found herself, as well as to prejudice the investigation by reason of imperfect recall, staff turnover and the like.

10. Nor was the investigation thorough. The Panel records in a footnote to its report that, in her interviews, the complainant mentioned other incidents in which Mr A. (although, he may not have been her first-level supervisor at all of the relevant times) asked if she did not love him anymore, sat uncomfortably close to her while discussing her work objectives and made a comment during leisure time, when they were both on an official mission in a country in Africa, that he was glad she had not worn trousers rather than shorts because "otherwise [he] would have missed that beautiful view". The Panel made some enquiries with respect to events in Africa, which neither corroborated nor negated the incident alleged, but otherwise did not investigate these matters. Instead, it considered whether, if true, they could alter any of the Panel's principal findings and concluded that "[t]he answer was, in each case and collectively, negative". Clearly, that is not the case. If any of the events occurred, that would throw light on the probability of the other events having occurred as the complainant alleged and the reasonableness of her interpretation of them.

11. In relation to the events which directly concerned the complainant, the Panel's findings are inconclusive. In this respect the complainant alleged that Mr A. had said:

· "So, when will you invite me for coffee, […]?", and

· "Hmmm, you smell really nice, […], what is it?"

Those words were not denied, only their interpretation. That being so, their impact should not have been diluted by the Panel's addition of "or words to that effect".

12. The second finding of the Grievance Panel relates to a matter of some significance. It is not denied that Mr A. offered the complainant a two-year extension although she was eligible for a five-year extension. According to the complainant, when she asked for the reason for that offer, Mr A. replied that he did not "know [her] well enough yet" and that he would be "more than happy to grant a five-year extension in two years time if [they got] on well". It appears that those words were not denied. At least, there is no record of any denial notwithstanding that the complainant repeated them in an e-mail to her first and second-level supervisors. After meeting with her second-level supervisor, the Assistant Director-General of EIP, the complainant spoke to Mr A. and, according to her contemporaneous notes, complained of his inappropriate behaviour. At that meeting, according to her notes, Mr A. said that his earlier remarks "did not address a personal issue but meant professional collaboration". Given that the words were not denied, that they did not deal with any aspect of the complainant's work and that, at the very least, they were ambiguous, it was wrong of the Panel to express its finding in terms of a "suggest[ion that] a five-year renewal would be considered after determining whether [the complainant] and her programme were able to integrate successfully into HRH, or words to that effect".

13. Before turning to the finding relating to the touching of the complainant's arm or shoulder, it is appropriate to refer to the complainant's objection to Mr A.'s inappropriate behaviour. While he claimed not to remember the exact details of what was said, he did recollect that something was said to "[raise his] antennas" and to lead him to think that "[he] would have to be more careful". He said that he tried, thereafter, to distance himself from the complainant.

14. The complainant stated that in the weeks immediately following her objection to his behaviour Mr A. behaved correctly on the occasions that they met. Approximately one month later, on 18 May 2004, she presented herself at an office at the Palais des Nations to enquire of Mr A. as to the time of a meeting. She claims that he stepped out into the corridor and told her that they would meet an hour later and that while telling her this "he gently stroked [her] left forearm up and down in a sensuous manner with his right index finger". Mr A. did not deny touching the complainant on the arm or shoulder and suggested he may have been trying to move her away from the door. He denied stroking her arm as alleged. The Panel proceeded on the basis that the act of stroking, as described by the complainant, would "clearly constitute disturbing behaviour" but, "although suggestive of sexual

intent, [was] not overtly sexual in nature". The Panel concluded that the act of stroking was not supported by the weight of the evidence, largely because it was implausible that Mr A., when confronted by the complainant's presence, would have:

"1) realize[d] that, in spite of several weeks having passed [since the meeting where his "antennas" were raised], he was suddenly presented with an opportunity to renew his previous harassment […], 2) conceive and plan an act of stroking that, although plausibly disturbing to [the complainant] herself, would nevertheless maintain a character of reasonable deniability to non-witnesses, 3) execute the planned action and 4) also communicate the particulars required of him under the circumstances […]"

The Panel's reasoning is not convincing, particularly when regard is had to the consideration, as will later become clear, that intention is not necessary for conduct to constitute harassment, much less premeditation.

15. There was evidence before the Grievance Panel that, shortly after her meeting in the corridor with Mr A., the complainant reported to the Human Resources Officer that Mr A. had "touched her on the forearm with an up-and-down motion". That officer stated in an interview with the Panel that the complainant displayed "a mixture of anger and fear" at that time. The Panel chose to distinguish between "stroking" and "touching with an up-and-down motion" and considered whether the latter constituted harassment. It took the view that the Human Resources Officer's account "[did] not constitute strong support for the existence of an up-and-down touching motion" because she had been allowed to read relevant parts of the complaint. It also formed the view that, in the absence of eye-witnesses or photographic evidence, "up-and-down motion" on the complainant's forearm could only constitute harassment if Mr A. knew that she found it objectionable or there was a pattern of harassing behaviour on his part. So far as concerns knowledge, the Panel held that the complainant's "ostensible warning to Mr [A.] notably addressed verbal behaviour that she had found objectionable. Mr [A.] may therefore plausibly have been more conscious about what he said [to the complainant] than about an act of touching that he might have considered as acceptable under the circumstances." Further, the Panel took the view that there was not a pattern of harassing behaviour. Thus, it found against the complainant without ever determining precisely what had occurred.

16. It is necessary to consider the Grievance Panel's finding that there was no pattern of harassing behaviour in the context of the definition of "harassment" in Cluster Note 2001/9 concerning the WHO Policy on Harassment. That policy relevantly defines "harassment" as:

"any behaviour by a staff member that is directed at and is offensive to others, which that person knows or should reasonably know, would be offensive, and which interferes with work or creates an intimidating, hostile or offensive work environment."

The general definition of "harassment" also makes it explicit that "if a specific action […] is reasonably perceived as offensive by another person(s), that action might constitute harassment, whether intended or not". "Sexual harassment" is further defined as:

"any unwelcome […] sexual advance, request for sexual favours, or other verbal or physical conduct of a sexual nature, when it interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive work environment."

17. The evidence which the Grievance Panel considered in relation to the question whether there was a pattern of harassing behaviour included the statements of and interviews with Ms X and Ms Y. To a large extent the Panel accepted their version of events but held that it did not constitute harassment. Ms X, whose consultancy was coming to an end, gave an account to the effect that she had been asked by Mr A. to telephone him at his home on a particular evening when she returned from a mission. When she did so, she was asked to go to his apartment. No other person was present when she arrived. After some time she was asked to sit closer to him and he thereupon held her hand for what she said was a prolonged time. Mr A. admitted that he held her hand but said that he "did not intend anything thereby". Ms X claimed in her written statement that he also tried to kiss her in an intimate way. In her interview, she said that she felt that he wanted to kiss her in an intimate way but that she tried to make it into a "general kiss". Mr A. said that he kissed her goodbye "in the customary way". The Panel accepted that Ms X found the incident discomforting and offensive and was "confronted with a situation that she experienced as vulnerable". However, the Panel considered that her vulnerability was conditioned by an external factor, namely whether or not she should tell her husband about the incident. According to the Panel, that was not something about which Mr A. could "reasonably be expected to have been aware".

18. So far as concerns Ms Y, her evidence was that in the period between 1998 and 2000, during which Mr A. was, for a time, her second-level supervisor, he frequently suggested that they should meet after work or came into her office, closed the door and asked for a kiss. She said in her interview that she managed her interactions with him by sitting down or physically disengaging if she felt uncomfortable with an embrace. She indicated that she did not object verbally or protest. The Panel noted that she did not claim "that any of these embraces or kisses was ever lascivious or overtly sexual in nature, but rather that they were 'ambiguous'". Mr A. was asked if Ms Y might have "perceived his gestures as other than 'brotherly'". He replied that he did not know and said that she had never told him to desist. The Panel accepted that Ms Y "might well have found herself in a position where, despite having been offended or made uneasy […], she did not feel a sufficient sense of security to object openly". However, it concluded that Mr A. "did not clearly do wrong to act as he apparently did, and cannot therefore be held responsible for the corresponding vulnerability that Ms [Y] claims to have experienced". Moreover, it noted that she "could have ended [his] unwelcome behaviour at any time by objecting to or protesting to him about his actions".

19. The Grievance Panel further noted in relation to both Ms X and Ms Y that their "vulnerability" did not result in the loss of job-related benefits or entitlements or the threat of any such loss. Nor, in its view, did the circumstances constitute "a hostile, intimidating or abusive work environment". It is notable that this finding is expressed in terms of an "abusive work environment", rather than an "offensive work environment", as used in the definition of "harassment". There can be no doubt that actions of the kind described by Ms X and Ms Y are capable of giving rise to an offensive work environment and that those persons found that they did. Moreover, it is significant that the definitions of "harassment" and "sexual harassment" require only that the conduct in question interfere with work. Further, the Panel had regard to irrelevant considerations, namely whether Ms Y objected to or protested against the conduct which she experienced and whether, in either case, the conduct resulted in the loss of job-related benefits.

20. The findings in relation to Ms X and Ms Y involve errors of law and cannot stand. Because those findings were used by the Grievance Panel to found its conclusion that there was no pattern of harassing behaviour on the part of Mr A., so, too, that conclusion cannot stand. And because that conclusion was critical to its finding that the complainant was not sexually harassed, that finding, which involved a further error insofar as the Panel considered that a warning as to verbal behaviour did not extend to physical conduct, cannot stand. It follows that the Director-General's decision of 14 February 2006 must be set aside.

21. Before considering the relief to be granted, it is convenient to note some other aspects of the Grievance Panel's investigation. In addition to Ms X and Ms Y, the Panel interviewed the complainant's secretary, Ms Z, and three persons whom it believed were among the six women referred to by the complainant as having experienced harassment by Mr A. In the event, none of these three persons claimed to have experienced harassment although one did say that, in her view, some of the comments made by Mr A. were "out of place" and that she felt it was wrong for him to compliment women on their clothing in a professional setting. Another person indicated that Mr A. "would occasionally kiss [her] in a friendly manner […] but it was never beyond the limit of what would be considered normal in social interaction". Yet another described his behaviour as "toward the more flirtatious side". The Human Resources Officer to whom the complainant reported the incident in the corridor at the Palais des Nations also described his general conduct as "flirtatious".

22. So far as concerns the complainant's secretary, Ms Z, it is not disputed that Mr A. asked her what she was going to give him for Valentine's Day and that she replied that she would give him a Bible. When interviewed, Ms Z denied that she was offended by the Valentine's Day remark. She said that she had spoken of it to two persons and one of them had said that that was sexual harassment, which Ms Z contested. Although Ms Z refused to name the persons to whom she related the incident, the Grievance Panel, without giving the complainant an opportunity to answer the allegation, expressed its belief that she had spoken to the complainant and stated, in addition, that it believed that it was "likely that […] [the complainant] knowingly made false claims regarding the reactions and interpretations of [Ms Z]". It was a breach of due process for the Panel to express that view without giving the complainant an opportunity to answer the allegation.

23. In its findings, the Panel stated that the complainant "misrepresented facts in connection with her complaint but that the facts concerned were not central to the legal basis of her complaint". That finding was based on three matters. The first was its conclusion with respect to the conversation related by Ms Z. In this regard, it may be noted that there was simply no evidentiary basis for the belief expressed by the Panel. The second was its finding that the complainant's claims with respect to the six other women to whom she referred in her complaint were

"substantially at variance with [their] actual experiences […], at least whenever it proved possible to make a plausible comparison". The Panel was only able to interview three women out of the six the complainant referred to, one of whom stated that she found aspects of the behaviour of Mr A. to be out of place. Another witness recounted kissing, albeit in what she considered in a socially appropriate manner, and a third described his behaviour as tending towards the "flirtatious". Again, this was not a substantial basis for a finding of misrepresentation on the part of the complainant. The third basis was its finding that the complainant "made a number of representations regarding facts that, if not actually false, could nevertheless be considered to constitute tendentious or potentially misleading statements when compared with the testimony […] offered by the Human Resources Officer, the Director of Human Resources [Services] and the Assistant Director-General of EIP". There is nothing to indicate any significant divergence between the complainant's account and either that of the Human Resources Officer or the Director of Human Resources Services. So far as concerns the account given by the Assistant Director-General of EIP, the main difference was that he said that he discussed the complainant's difficulties with Mr A. but that they concerned only management issues. Given the lapse of time before the Panel was constituted, it was at least as likely that his memory was defective as that the complainant's account was "tendentious". Overall, these matters do not provide a solid foundation for a finding that the complainant misrepresented the facts. Rather, the Panel's analysis suggests that it was less than objective in its examination of the matter.

24. The Panel made other adverse statements in relation to the complainant. For example, it said in relation to her reaction to the conversation in which Mr A. offered her a two-year extension that she "may well have suffered substantial emotional and physical distress as a result of [his] actions, [but] if she did she cannot be said to have suffered it as the result of a reasonable interpretation […] of those actions". It also referred to the complainant's objection with respect to the offer of a two-year extension and to other incidents "not explicitly mentioned in [its] report" and expressed the view that she "appear[ed] [...] to interpret the Staff Rules and Regulations, and other administrative directives, in a way that serve[d] her personal interests but which [was] not necessarily consistent with the ostensible intention of the relevant policies and procedures". In this context, the Panel referred to the complainant's various leadership positions, including with the Staff Committee and the Headquarters Board of Appeal and said that "if she had exercised more restraint in her disagreements with her supervisors over managerial and administrative matters she would have been less liable to appear to use her positions of influence for personal benefit". These last observations were not relevant to her complaint and suggest that the Panel did not understand its obligation not to denigrate persons who make a complaint of sexual harassment.

25. As already indicated, the Director-General's decision of 14 February 2006 must be set aside. Because various incidents were, to a large extent, not disputed, the Tribunal is able to substitute its own decision for that of the Director-General. In this regard, it is convenient to note that the Grievance Panel found that Mr A. exhibited "a pattern of behaviour" that, although not properly characterised as "clearly inappropriate or sexually harassing", could be characterised as "a more than usually personal approach to management and to relationships in the workplace", and said that it "did appear to some as ambiguous and open to differing interpretations". Clearly, Mr A. had made remarks to her that could be characterised as "flirtatious", as could the remark to her secretary, Ms Z. In that context, it was not unreasonable to take Mr A.'s remark that he would be happy to give her a five-year extension after two years "if [they got] on well" as having a sexual sub-text. Moreover, it is not disputed that the complainant said something to Mr A. to indicate that she found his remarks offensive. And in this, her actions were entirely reasonable: "flirtatious" remarks made in the workplace by a male supervisor to female staff inevitably diminish their professional standing. Having made clear to Mr A. that she found his remarks offensive, he should reasonably have known that she would also find inappropriate physical contact offensive. The complainant's claim of inappropriate physical contact, whether it be described as "stroking" or an "up-and-down motion" – a distinction which is, at best, elusive – was supported by her near contemporaneous account to the Human Resources Officer who described her as exhibiting a mixture of anger and fear. Given the undisputed accounts by Ms X and Ms Y of the behaviour of Mr A., the overwhelming weight of the evidence requires a finding that the complainant was sexually harassed.

26. The complainant is entitled to damages for the harassment she has suffered and for its natural and probable consequences. In this regard, although the material presented does not enable a positive finding that the complainant was forced to relinquish her position as Coordinator because of the stressful work environment, it is clear that she suffered considerable stress as a result both of the meeting at which Mr A. offered her a two-year extension and an extension for a further five years if they got on well and the incident in the corridor at the Palais des Nations. It is also to be expected that, at least to some extent, her workplace was less than congenial following the filing of her formal complaint and pending its protracted investigation. The complainant is also entitled to moral

damages for the failure of the WHO to constitute a grievance panel that could investigate her complaint promptly, thoroughly and objectively. The criticisms of the complainant's credibility, which were not soundly based, the finding that her reaction to the meeting with respect to the extension of her contract was unreasonable and the gratuitous remarks suggesting that she used her positions of influence for personal benefit were an affront to her dignity and, even though the report was only distributed to staff members who were entitled to receive it, they were likely to have an adverse impact on her professional career. In these circumstances, there should be an overall award of moral damages in the sum of 30,000 Swiss francs. Although no specific request is made regarding costs, she is entitled to costs which the Tribunal sets at 5,000 francs.

DECISION

For the above reasons,

1. The decision of the Director-General of 14 February 2006 is set aside.

2. The WHO shall pay the complainant moral damages in the sum of 30,000 Swiss francs within one calendar month of the delivery of this judgment.

3. It shall also pay her 5,000 francs in costs.

In witness of this judgment, adopted on 4 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2007.