

The Administrative Tribunal,

Considering the complaint filed by Ms F. H. P. against the Food and Agriculture Organization of the United Nations (FAO) on 6 February 2006 and corrected on 27 April, and the Organization's reply of 19 July 2006, the complainant having declined to file a rejoinder;

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

Having examined the written submissions;

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

A. The complainant is a Chadian national born in 1969. After first being assigned to a field project, she was given a one-year fixed-term appointment as from 6 July 1998 as a clerk/secretary at grade G-4 at the Office of the FAO's Representative in Chad. Her contract was renewed several times. At the material time she occupied the post of secretary to the FAO's Representative in Chad.

In an evaluation form drawn up in September 2001, the complainant's immediate supervisor made *inter alia* the following comment about her: "Is making efforts to improve her work." For his part, the Representative stated that:

"[The complainant] has undoubted potential which ought to be put to better use. She could make rapid progress if she were less scatterbrained and concentrated more on her work."

Nevertheless he recommended that her appointment be extended for two years as from 31 December 2001.

By a letter of 10 December 2001 the Representative issued the complainant a warning for "failure to respect confidentiality and the chain of command in the exercise of [her] duties" and for "sending documents and correspondence to Headquarters from the Office of the Representative without the latter's prior authorisation"; he also informed her that, as a provisional measure, she was being transferred. The next day the complainant sent a letter to the Representative contesting the reasons for his warning. In addition, she accused him of harassing her and of "waging a merciless war on [her] every day" after she had been unable to accompany him to Gabon. Her contract was extended for only 12 months, i.e. until 31 December 2002, "owing to the weaknesses displayed in the performance of [her] duties as a secretary".

On 27 January 2002 the complainant sent a memorandum to the Administration in which she accused the Representative of sexual harassment. At the end of April 2002, after she informed the Medical Unit that the situation had improved, the file was shelved. On her return from maternity leave, the complainant wrote to the Medical Unit on 5 September to "tell [it] of the weight of the cross [she] ha[d] to bear" and accusing the Representative of harassment, blackmail and humiliation.

On 2 October the Administration sent the complainant a copy of an announcement, which had been published in the *Journal officiel* of the Republic of Chad, to the effect that a trading company had been set up of which she had been appointed manager. It asked her to comment in light of the fact that, under Rule 302.1.51 of the Staff Rules, "[s]taff members shall not engage in any [...] outside occupation or employment without the prior approval of the Director-General". In a memorandum of 23 October 2002 the complainant admitted that she had been appointed manager of the company in question but indicated that, owing to her duties at the FAO, she had given power of attorney to a Mr O. Her contract was subsequently renewed on several occasions, the last time being until 29 February 2004.

An inquiry conducted between 7 and 10 April 2003 revealed that the allegations of sexual harassment had not been proved, that the complainant had indeed engaged in commercial activities in addition to her work at the FAO and

that she had also supplied a forged management studies degree certificate. It was recommended inter alia that she be suspended from duty without pay for one month. By a memorandum dated 29 October 2003 the complainant informed the Administration that, despite the departure of the Representative, she was still being subjected to discriminatory treatment due to the actions of certain colleagues.

In a memorandum dated 4 February 2004, which the complainant received on 13 February, the Organization informed her that, since she had not furnished any explanations which might justify her conduct in response to the accusations that she had been engaging in outside commercial activities and had presented a forged degree certificate, it considered that the facts had been established and that she had been guilty of “unsatisfactory conduct” within the meaning of paragraphs 330.1.51 and 330.1.52 of the FAO Manual. It had therefore been decided that she would be suspended from duty without pay for one month as from the date of receipt of the said memorandum. In another memorandum of 4 February the complainant was informed of the decision not to extend her appointment beyond 29 February 2004 on the grounds of unsatisfactory performance and conduct. In order to permit the implementation of the disciplinary measure her contract was, however, extended until 14 March 2004, the date on which she left the Organization.

On 2 May the complainant lodged an appeal with the Director-General in which she requested the annulling of the suspension measure and her reinstatement in the FAO. As this appeal was dismissed as being unfounded, the complainant submitted the matter to the Appeals Committee on 10 August 2004. In its report of 3 August 2005, the Committee considered that the inquiry into the allegations of sexual harassment ought to have been conducted in a more expeditious and appropriate manner, that the disciplinary measure of suspension without pay was justified, that the decision not to extend her contract was flawed and that, in view of the complainant’s accusations of irregularities in the functioning of the Office of the FAO’s Representative in Chad, it would have been advisable to carry out an audit. The Committee recommended that a performance appraisal should be drawn up for the period between 1 March and 31 October 2003 and that the complainant should either be reinstated with retroactive effect from the date of separation or awarded appropriate compensation. By a letter of 15 December 2005, which constitutes the impugned decision, the Director-General informed the complainant that her internal appeal had been dismissed as unfounded.

B. The complainant provides several examples of the sexual harassment to which, she claims, the FAO Representative in Chad subjected her. In particular she relies on the fact that he had offered her “presents proclaiming his love” (for example a bottle of the perfume *Un amour de Patou*) and had invited her on private journeys. Relying on Judgment 1376, she submits that the Organization did not process her complaint of harassment seriously. She states that because she resisted her supervisor’s advances and filed that complaint, she was treated to “singularly cruel reprisals culminating in disciplinary measures”.

The complainant denounces the unwarranted and unlawful nature of these disciplinary measures. She points out that on 5 December 2001 the Representative had asked that she be confirmed in her post because, in his opinion, she had “all the qualifications and skills required” for the post. Yet five days later she received a warning and was transferred. She submits that the Representative took this action after being informed of her complaint of harassment and she accuses him of having used his “position of authority to turn [her] out as if she were stricken with the plague”. She adds that she was punished twice for the same charges and asks the Tribunal to provide redress.

In addition, the complainant criticises the terms of the inquiry of April 2003, especially in view of the fact that the inquiry was extended to her conduct and performance, so that instead of being the accuser, she became the accused. She submits that she did not sign her last fixed-term contract and, in the absence of any written agreement, she deduces that she has a permanent contract which can be terminated by the FAO only on objective and serious grounds, which are lacking in this case.

Lastly, the complainant denounces several irregularities in the functioning of the Office of the FAO’s Representative in Chad. By way of example, she states that the Representative grants or withdraws the status of FAO staff member “according to his likes or dislikes, with incredible ease”. She offers to demonstrate “heaps of abuse of authority” during the hearings she wishes to be held before the Tribunal.

She asks the Tribunal to find that she has suffered sexual harassment and that the disciplinary measures imposed on her are unjustified. She seeks the annulment of these disciplinary measures, reinstatement as from the date of her separation and the retroactive payment of the salary due since that date. Lastly, she claims 5 million euros in

compensation for injury under all heads.

C. In its reply the FAO contends that the claim for compensation in the amount of 5 million euros is irreceivable on the grounds that internal means of redress have not been exhausted. It adds that the complainant has not proved that she has suffered any injury.

On the merits the Organization submits that, in view of the complainant's character, her incoherent and unseemly statements and her "various frauds and forgeries", her libellous statements must be dismissed straight away.

The Organization maintains that the allegations of sexual harassment were no more than a stratagem for obtaining promotion, and that the complainant engaged in "remorseless denigration of her supervisor" when she discovered that she had no likelihood of obtaining this promotion. The evidence she has furnished appears to be "insubstantial" and the Organization fails to see how, by handing the complainant's husband a bottle of perfume for her around her birthday, the Representative wished to force "shameful schemes" upon her.

The FAO points out with regard to the management of the trading company that the power of attorney given to Mr O. does not bear the usual notorial reference. The inquiry carried out in April 2003 revealed not only that the complainant had in fact engaged in outside commercial activities, but also that she had deceived the Organization by claiming to hold a management studies degree and producing forged documents. As the explanations she gave were unsatisfactory, the FAO considers that it had good grounds for imposing the disciplinary measure of suspension from duty on the complainant. On the other hand, her appointment was not extended because of her poor performance and the disciplinary offence she had committed.

Lastly, the Organization submits that it is not for the complainant to make a judgement on any alleged irregularities in the functioning of the Office of the FAO's Representative in Chad, and it endeavours to demonstrate that the complainant's accusations are groundless.

CONSIDERATIONS

1. When she occupied the post of secretary to the FAO's Representative in Chad, the complainant sent a memorandum on 23 October 2001 to the Organization's Headquarters in Rome complaining about her situation. She claimed to be "reduced to registering mail and answering the telephone", although she held a higher vocational training certificate, had been awarded a "management degree by N'Djamena University" and was studying for a "master's degree 'business management and administration' at the *Institut supérieur de gestion*". She ended her memorandum with a request for "intervention to restore [her] rights by providing [her] with the opportunity for professional development".

The FAO's Representative in Chad, who was not yet aware of the content of the complainant's memorandum of 23 October 2001, requested on 5 December that she be confirmed in her "post of secretary to the Representative at grade G-5 at which the post was initially classified". On 10 December he sent the complainant a warning for "failure to respect confidentiality and the chain of command in the exercise of [her] duties" and for "sending documents and correspondence to Headquarters from the Office of the Representative without the latter's prior authorisation". He further notified her that as a provisional measure she was being transferred.

On 11 December 2001 the complainant sent the Representative a letter challenging the grounds for the warning. She claimed to be the victim of intimidation, threats, exploitation and harassment on the part of the Representative. In conclusion, she noted that it would be preferable if he were to apply to Headquarters for an agreed separation "instead of subjecting [her] to mental torture".

In a memorandum dated 9 January 2002 the Administration informed the complainant that, "following consultations with the FAO's Representative, it ha[d] been decided to extend [her] appointment for only twelve months [...], i.e. until 31 December 2002, owing to the weaknesses displayed in the performance of [her] duties".

In a note for the file dated 21 January 2002, the Senior Programme Officer of the Decentralization Service, who had undertaken a mission to Chad from 13 to 15 January, stated that the complainant had reported to him that the Representative had demonstrated improper intentions in her regard by sending her a bottle of perfume with "a heart and the outline of a woman's body" on the box and by suggesting that she spend her leave with him in Gabon, his country of origin. She had also alleged that following those two incidents the Representative had begun to "find

fault” and had “assign[ed] her to other activities”.

The complainant reiterated in a memorandum of 27 January 2002 some of the allegations she had made on meeting the Senior Programme Officer in N’Djamena a few days earlier and accused the Representative of sexual harassment.

On 13 February 2002 the Director of the Office for Coordination of Normative, Operational and Decentralized Activities requested the opening of an inquiry inter alia into the allegations of sexual harassment. The Senior Medical Officer of the Medical Unit, whose opinion had been requested in accordance with Administrative Circular No. 96/13 of 20 May 1996 on the prevention of sexual harassment, informed the Director of the Human Resources Management Division, by a memorandum dated 18 April 2002, that the complainant did not wish to pursue her case for the time being. The Director informed the complainant on 29 April 2002 that the file had been “shelved until further notice”.

By a memorandum of 5 September 2002 the complainant informed the Medical Unit that she was being subjected to sexual harassment in her workplace and that she would be compelled, if the situation continued, to file a complaint with the Legal Matters Unit of the Personnel Division.

The FAO’s Representative in Chad recommended on 15 November that the complainant’s appointment should not be renewed, inter alia on the ground that, “instead of seeking to improve her performance and to do the work for which she was recruited, she has opted to launch a personal attack on the Representative”.

On 11 December 2002 the Director of the Decentralization Service decided to extend the complainant’s contract for three months pending an examination of the situation.

An inquiry was conducted at the Office of the FAO’s Representative in Chad from 7 to 10 April 2003 to examine the allegations of harassment, the complainant’s alleged outside business activities, the assessment of her performance and the extension of her appointment.

On 4 November 2003 the Administration notified the complainant of a proposed disciplinary measure involving a one-month suspension without pay for engaging in outside business activities and claiming to have academic qualifications that she did not possess, a fact that had come to light in the course of the inquiry. The complainant submitted her comments on the proposed disciplinary measure on 17 November 2003.

On 4 February 2004 the Director of the Human Resources Management Division informed the complainant that it had been decided to impose on her the disciplinary measure of a one-month suspension without pay for having engaged in outside business activities and presented a forged certificate.

On the same day the Director of the Office for Coordination of Normative, Operational and Decentralized Activities informed her that her service with the FAO would cease on the date of expiry of her fixed-term appointment, i.e. on 29 February 2004, on account of her unsatisfactory performance and conduct. On 9 April the Director of the Human Resources Management Division informed the complainant that her contract had been extended until 14 March 2004 so that the disciplinary measure could be implemented.

On 2 May 2004 the complainant lodged an appeal with the Director-General of the Organization. As the appeal was dismissed, she submitted the matter to the Appeals Committee on 10 August 2004. In its report of 3 August 2005 the Committee found that:

- “(a) The inquiry into the complainant’s allegations of sexual harassment should have been conducted in a more expeditious and appropriate manner;
- (b) The disciplinary measure of one month’s suspension without pay was justified;
- (c) The decision not to renew the fixed-term appointment was flawed;
- (d) Having regard to the complainant’s allegations of irregularities in the functioning of the Office of the Representative in Chad, it would have been fitting for the relevant departments to conduct an appropriate inquiry (audit)”.

It further recommended that:

- “(1) A performance appraisal report on the complainant covering the period from 1 March 2003 to 31 October 2003 should be prepared;
- (2) The complainant should be reinstated with retroactive effect from the date of separation or paid appropriate compensation;
- (3) She should be given a certificate of service in the event that she is not reinstated.”

The Director-General refused to follow the Committee’s recommendations and dismissed the complainant’s appeal by a decision of 15 December 2005, which constitutes the impugned decision.

2. In her submissions the complainant asks the Tribunal, inter alia:

- “- To adjudge and declare that she is a victim of sexual harassment in the workplace;
- To adjudge and declare that the penalties imposed on her are unjustified and to revoke them unconditionally;
- To order in consequence that she be reinstated retroactively with effect from the date of her separation from service;
- To order that the salary due since that date be paid to her with retroactive effect”.

It further asks the Tribunal to order the FAO to pay her the sum of 5 million euros in damages under all heads.

3. The complainant asserts that the FAO’s Representative in Chad was guilty of sexual harassment. She claims that he invited her to join him on several occasions in hotel or inn rooms, gave her a bottle of perfume called *Un amour de Patou* as a present and asked her to accompany him to his home in Gabon when on leave; he allegedly bought her an airline ticket for that purpose and sent a *note verbale*, which is included in her submissions, to the French Embassy in Chad requesting that she be granted a visitor’s visa. According to the complainant, he not infrequently went so far as to engage in “amorous fondling in the office”. All this in her view constitutes evidence of sexual harassment.

She claims that her refusal to respond to the Representative’s advances, on the one hand, and her complaint about the situation he had created, on the other, led to “singularly cruel” reprisals culminating in the penalties imposed on her.

She argues that her allegations were not taken seriously, as required by the Tribunal’s case law (see Judgment 1376), but instead laid her open to victimisation. As soon as the Representative heard that she had filed a complaint with the Organization’s Headquarters in Rome, he issued her a warning on 10 December 2001 and transferred her with immediate effect. She submits that this could only amount to retaliation inasmuch as five days earlier, on 5 December, the same Representative had sent a letter to Rome requesting that she be confirmed in her post because she had “all the qualifications and skills required” for the post.

She points out that all her performance appraisals until 5 December 2001 were excellent, while those drawn up after that date were, “oddly enough, extremely mediocre”.

The defendant’s attitude was, in her view, shocking because it waited until 7 April 2003 to send an official from Headquarters to Chad to conduct an inquiry into her allegations, although she had filed a complaint with the Administration as early as 2001 and a second one on 5 September 2002. The official in question, she notes, was given board and lodging in the home of the Representative against whom the complaint was filed and travelled in his car. As a result, instead of seeking evidence in support of her allegations of sexual harassment, the inquiry treated that aspect as an eminently subsidiary matter and focused instead on the charges brought against her, that is involvement in business activities, possession of a forged degree certificate and presence in the workplace “with three mobile phones”.

The complainant contends that she was punished twice, on the same date, for the same charges, i.e. on the one hand, by non-renewal of her fixed-term appointment and, on the other, by a one-month suspension without pay,

and that the impact of the latter disciplinary measure extended beyond the date on which her contract ended, i.e. 29 February 2004.

She submits that the defendant unilaterally extended her fixed-term contract and that, in the absence of any written document, her situation was that of an official with a permanent contract that could be terminated only on objective and serious grounds, which did not exist in the present case.

Lastly and subsidiarily, the complainant draws the Tribunal's attention to what she terms "irregularities in the functioning of the FAO in Chad".

4. In its reply the defendant submits that the complaint cannot exceed the scope of the pleas and claims put forward by the complainant before the Appeals Committee and that any additional element is irreceivable, since the complainant has failed to exhaust the available means of redress. It requests that, in accordance with the Tribunal's case law, particularly the principles laid down in Judgments 1149, 1322 and 1380, the complainant's claim for payment of the sum of 5 million euros "in damages under all heads" should be declared irreceivable.

On the merits, it asks the Tribunal to declare that the complaint is unfounded. It contends that, on the issue of sexual harassment, the evidence has been analysed in detail and seems "insubstantial".

With regard to the claim that she was punished twice, the Organization submits that the complainant has produced "no admissible evidence" and that in this respect she has ignored the relevant provisions of the FAO Manual.

Receivability

5. According to firm precedent, "the complainant may not put wider claims to the Tribunal than in the internal appeal" (see Judgment 1443, under 4).

In the instant case, the complainant, in her appeal to the Director-General, the rejection of which prompted her to submit the matter to the Appeals Committee, merely requested that the disciplinary measure of suspension be revoked and that she be reinstated in the Organization. In her appeal she asked the Committee to rule that the penalties imposed on her were unlawful. It would therefore appear that during the internal proceedings she filed no specific claim for damages for an injury due to the sexual harassment she claimed to have suffered, although she dwelt at length on her allegations of sexual harassment and attributes the reprisals by her supervisor to her having reported them.

The Tribunal therefore considers that any claim for damages for the injury that the complainant allegedly suffered as a result of sexual harassment constitutes an extension of the scope of the claims filed during the internal appeal proceedings and is therefore irreceivable pursuant to Article VII(1) of the Tribunal's Statute inasmuch as the complainant has not exhausted the internal means of redress (see, inter alia, Judgment 1380, under 12).

The merits of the complaint

6. The complainant claims that the Organization acted unlawfully and without justification by imposing on her a double punishment – one month's suspension without pay, on the one hand, and non-renewal of her fixed-term appointment, on the other – for the same acts, namely engaging in outside business activities and possessing a forged degree certificate.

She contends that these measures actually constitute retaliation for her complaint of harassment filed against the FAO's Representative in Chad.

7. With regard to the suspension without pay the Tribunal considers that, in the light of the material in the file, this was justified, as stated by the Appeals Committee, since it was established that, in breach of the relevant provisions, the complainant had engaged in certain business activities and that she had claimed to hold a degree that proved to be a forgery.

On the other hand, the Tribunal considers that there was no justification for extending the fixed-term appointment on its expiry solely for the purpose of implementing the disciplinary measure without the complainant's consent. It would have been wiser to choose a penalty that was compatible with the complainant's administrative situation, without resorting to a procedure that violated her rights.

8. With regard to the non-renewal of the complainant's contract, it appears from the memorandum of 4 February 2004 from the Director of the Office for Coordination of Normative, Operational and Decentralized Activities that that decision was taken on the ground that the complainant's "job performance ha[d] deteriorated since July 2000 to such an extent that it [was] a source of tension within the Office of the FAO's Representative, impeding the smooth running of its activities" and also because of her "unsatisfactory conduct, due to [her] business activities and the presentation of a forged certificate, [which had] undermined the relationship of trust that the Organization has a duty to foster with its officials". The grounds cited indicate that the Organization sought to punish the complainant again for her conduct by its decision not to renew her appointment.

The Tribunal notes that the complainant's involvement in business activities and the presentation of a forged certificate had already given rise to the disciplinary measure of suspension without pay and therefore could not form the basis of a further decision that can be deemed to constitute a penalty.

The only remaining justification for non-renewal of the contract is therefore the inadequacy of the complainant's performance. In this connection the Tribunal notes, as did the Appeals Committee, that on 5 December 2001 the FAO's Representative in Chad had recommended that the complainant be confirmed in her post, since he considered that her performance of the work assigned to her was entirely satisfactory and that she had all the qualifications and skills required for the post, but that a few days later, that is to say after finding out that the complainant had informed Headquarters about her situation, the same Representative announced that he was unwilling to extend the complainant's contract for more than six months on account of her unsatisfactory performance, and also that, according to the findings of the inquiry report, the performance appraisal reports sent by the Representative to Headquarters from December 2001 onwards were neither consistent nor reliable.

In the light of the foregoing, questions arise regarding the objectivity of the Representative's assessments of the complainant's performance and regarding the relationship that may exist between the charges of sexual harassment and the negative assessments.

9. According to the case law, "[a]ny organisation that is serious about deterring sexual harassment and consequential abuse of authority by a superior officer must be seen to take proper action. In particular victims of such behaviour must feel confident that it will take their allegations seriously and not let them be victimised on that account" (see Judgment 1376, under 19).

In the present case the defendant failed to comply with its obligation to protect the complainant's rights. It is clear from the material in the file that the complainant's allegations did not give rise to an inquiry by an Investigation Panel, as required by paragraph 4 of Administrative Circular No. 96/13 and as so pertinently noted by the Appeals Committee. On the contrary, despite a reference to the said Circular, the inquiry that was ordered focused instead on the complainant's conduct and the quality of her performance, leading to a decision which the Tribunal views as constituting retaliation for the allegations made against the FAO's Representative in Chad.

10. It follows that the decision not to renew the complainant's appointment was taken for a reason other than that invoked by the defendant and should therefore be quashed without any need for oral proceedings.

11. The complainant requests that she be reinstated and paid a sum of 5 million euros in damages under all heads. In view of the circumstances of the case, in particular the complainant's wrongdoings, the Tribunal considers reinstatement to be inappropriate.

By way of compensation for the injury suffered by the complainant as a result of the unwarranted extension of her contract solely for the purpose of implementing the penalty imposed on her – which could not, as the complainant claims, convert her contract into a permanent one – and in view of the unlawfulness of the decision not to renew her fixed-term appointment, the Organization shall pay the complainant a sum equivalent to one year's salary and allowances for injury under all heads.

DECISION

For the above reasons,

1. The impugned decision is quashed.

2. The FAO shall pay the complainant a sum equivalent to one year's salary and allowances for injury under all heads, as indicated under 11, above.

3. All other claims are dismissed.

In witness of this judgment, adopted on 27 April 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet