

The Administrative Tribunal,

Considering the complaint filed by Ms C. C. against the World Intellectual Property Organization (WIPO) on 8 November 2006 and corrected on 29 November 2006, WIPO's reply of 6 March 2007, the complainant's rejoinder of 14 June and the Organization's surrejoinder of 12 September 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, a Portuguese national born in 1957, joined WIPO in March 1995 as a clerk at grade G.2 on a short-term contract. In November 1996 she was given a fixed-term contract at grade G.3 and on 1 November 2000 she was promoted to grade G.4. On 18 September 2001 she was transferred at the same grade to the Pay and Entitlements Unit, in the Expenditures Section of the Finance Division.

A few months after the complainant had taken up her duties in that section, her supervisor allegedly started to make advances to her. In November 2002 the complainant turned to the Ombudsperson and on 6 March 2003 she sent an internal memorandum to the President of the Staff Council in which she denounced her supervisor's actions and also complained about a colleague's behaviour. Both of them were verbally reprimanded at a meeting held on 10 March 2003 in the Director General's office and a note was placed in their personal file\*. The next day she was transferred, still at grade G.4, to the KnowledgeManagementCenter and e-Library – which has since been renamed the Library and Collection of Laws Section.

In May 2004 the complainant's new supervisor recommended her promotion, but without success. On 9 May 2005 the complainant was granted a permanent appointment. On 8 June 2005 her supervisor wrote an internal memorandum in which he proposed that she be promoted to grade G.5 on the basis of the work she was actually doing. On 26 January 2006, after the complainant had also applied for promotion, she was provided with a job description which she refused to sign, as she considered that it did not reflect her true responsibilities.

On 6 March 2006 the complainant sent a letter to the Director General in which she asserted that she had been treated in an unfair and discriminatory manner. She explained that her grade G.4 post in the Finance Division had really been a G.6 post and she emphasised that during her assignment to that division she had been the victim of sexual harassment which had seriously affected her health. She also stated that she could not understand why the job description which she had received in January 2006 showed the post as being classed as only G.4, given that she was doing the work of two P.2 officials. Having received no reply to her letter from the Director General within the prescribed time limit, she lodged an appeal with the Appeal Board on 20 April in which she reiterated her allegations and asked to be promoted to grade G.7.

The Board issued its opinion on 2 June. It found that the complainant had been subjected to sexual harassment and that she had never been compensated in any way, whereas her former supervisor had been granted all possible benefits, including two extensions of his contract beyond the mandatory retirement age, and had been given the rating "satisfactory without reservation" under all headings – including conduct – in his performance report of 25 August 2003. The Board was of the opinion that the supervisor had been "rewarded" and the complainant "punished". It concluded that she had been "victimised twice", firstly by being sexually harassed by her former supervisor and secondly through the Administration's inaction and lack of proper attention to her plight. It unanimously recommended that the dispute should be resolved amicably and suggested that the Administration should pay the complainant 30,000 Swiss francs in compensation, ensure that she obtained grade G.5 and put her on track, subject to her performance, to be considered for promotion to grade G.6 in the near future. In the event that this recommendation was not implemented, the Board recommended that she should be promoted to grade G.6 with at least six months' retroactivity and that a new job description reflecting her actual tasks should be

established.

By a letter of 11 August 2006, which constitutes the impugned decision, the Director of the Human Resources Management Department informed the complainant that the Director General had decided to adopt the recommendation that the dispute should be resolved amicably and therefore invited her to meet with the Administration with a view to bringing the matter to a close. The meeting with the Administration took place on 19 September, but the complainant declined the offer to pay her 30,000 francs in settlement of all claims, because it was not accompanied by a promotion. By an internal memorandum of 12 October the Director of the above-mentioned department informed her that she had until 31 October to accept the offer. The complainant maintained her position and filed a complaint with the Tribunal on 8 November 2006.

B. The complainant submits that the grade G.2 clerk's post she held in 1995 was really a G.4 post and that when she worked in the Finance Division she should have been employed at least at G.6 level. The G.4 duties she is currently performing were originally carried out by two P.2 officials. She emphasises that, despite the requests made in 2005 and her good performance appraisals, she has obtained neither promotion nor reclassification of her post. She claims that she has been "ignored" by the Administration since her transfer.

The complainant further denounces the fact that her former supervisor's contract was twice extended beyond retirement age, whereas she has received no compensation for the "extremely serious" acts of which she was the victim. In her opinion, by refusing to impose a severe disciplinary sanction – she considers that summary dismissal would clearly have been more appropriate than a mere verbal reprimand – the Administration completely failed in its duty to ensure a safe working environment for its staff members. She submits that her transfer to the KnowledgeManagementCenter and e-Library was more akin to punishment than to "recognition of her victim status", since the duties assigned to her there did not match her training or experience.

The complainant endeavours to show that her former supervisor's actions constituted sexual harassment within the meaning of Office Instruction 17/2006 and the Tribunal's case law. She emphasises that this harassment, which was accompanied by threats of reprisals, had extremely serious repercussions on her physical and mental health. In her view, the injury she suffered was underestimated and by offering her a mere 30,000 francs the Administration just continued to display a "rather contemptuous attitude" and to deny justice by not acknowledging her suffering. In this connection, she points out that the Appeal Board concluded that she had been "victimised twice", first by sexual harassment and secondly by the Administration's inaction. Nevertheless, she considers that the Board's recommendations show that it was more inclined to spare the Organization than to award her due compensation. She adds that WIPO has failed in its duty to grant her compensation.

The relief claimed in her complaint includes the setting aside of the impugned decision, an award of compensation in the amount of one million United States dollars (or 1,250,000 Swiss francs) for the moral and material injury she suffered, promotion to grade P.3 backdated to 8 November 2006, the drafting of a job description in keeping with the duties which she now performs and an award of 20,000 dollars (or 25,000 francs) in costs.

C. In its reply the Organization submits that the complainant, who in its opinion has not explained why she did not bring sexual harassment charges during the 18 months in which she worked in the Finance Division, has filed her complaint out of time because she has exceeded "the prescribed time limit for making new allegations about incidents which allegedly took place before 11 March 2003". In addition, if the complainant intended to challenge the conditions on which she was transferred to the KnowledgeManagementCenter and e-Library, she should have done so at the time of the transfer. At the material time she took no steps to obtain compensation and promotion. WIPO therefore considers that the complainant did not act in time and that she should not, "in a misconceived attempt to speed up her promotion", reopen a case which had been closed for three years by revisiting the seriousness of the acts committed against her, the sanction imposed and the fact that she has not been promoted.

The Organization asserts that any compensation must be in proportion to the seriousness of the acts committed – it points out that they gave rise to no more than a verbal reprimand – and that the offer to pay 30,000 francs in full and final settlement of all claims, without admitting any liability on its part, was made in good faith. It maintains that there is nothing to suggest that the Director General ignored the injury that the complainant claims to have suffered. The Appeal Board's recommendations, which are not binding, were "unfortunate and unrealistic": the Administration could not entertain the complainant's request for promotion without first conducting a technical assessment. WIPO notes that this promotion was requested by way of compensation and that promotion should never constitute a means of settling a dispute.

The Organization asserts that the complainant cannot substitute her own assessment of the appropriateness of a disciplinary sanction for that of the Director General and that she has failed to discharge the burden of proof with respect to her allegations of harassment. There is no tangible evidence to confirm the allegations regarding the period between 2001 and 2003, and the complainant did not produce a medical certificate establishing a link between her state of health and the alleged sexual harassment until 26 October 2006. Similarly, she has not proved that her health problems first appeared during the period in question, or that they are related to her work or to actions for which WIPO could be held liable. The Organization deduces from this that the complainant has greatly exaggerated the facts in order to bolster her request for promotion.

WIPO indicates that the request for reclassification is premature, as the complainant must first await the end of the reclassification process. It denies that the Administration has forgotten the complainant since her transfer: she was given a permanent appointment in May 2005 and on that occasion was even treated more than fairly, since she would not normally have been eligible for such an appointment until November 2006. In addition, the Organization explains that the Promotion Advisory Board examined a request for the complainant's promotion in 2004, but that she did not then meet all the requirements, that the Board did not meet in 2005 and that in 2006 it recommended that the request should be examined at its following session after the job description had been submitted. In the Organization's opinion, it does not behove the complainant to substitute her assessment for that of the competent bodies with respect to either reclassification of her post or promotion. Moreover, the complainant has not proved that the posts she held should have been classified at a higher grade. As for the complainant's current responsibilities, they do match those of a clerk.

Lastly, WIPO points out that the complainant received a job description in 1996 and 2001. Admittedly, when she was moved to the Finance Division she did not have an official job description, but she did have a detailed list of her duties and this situation does not seem to have caused her any injury. She was sent a job description outlining her current responsibilities on 23 January 2006, but she refused to sign it; she should not therefore complain of any delay because she herself has contributed significantly to it.

D. In her rejoinder the complainant makes it clear that the purpose of her complaint is to challenge the fact that the true value of her work has not been recognised, since the Administration has systematically ignored the steps taken to give her a grade matching her responsibilities and has continued to resort to stalling tactics. She argues that Staff Regulations 2.1 and 4.3 – which concern classification and promotion respectively – and Office Instructions 12/1998 and 8/2006 setting out guidelines for promotion have been breached, and she endeavours to demonstrate that the Organization has prevented her promotion for many years, despite the fact that she satisfies all the conditions for promotion after reclassification of her post or on merit. In her opinion, the fact that the Promotion Advisory Board did not meet in 2005 suggests that her supervisor's request that she should be promoted was ignored. She asks the Tribunal to order the Organization to produce relevant documentary evidence in this regard. The complainant further states that in March 2007 she learnt that the competent Deputy Director General had requested her promotion on 14 June 2006, but she presumes that this request was rejected; she would like the Tribunal to order WIPO to produce the relevant documentation in this connection as well.

The complainant explains that, having applied for reclassification of her post in November 2006, her supervisors, who considered that she was performing duties at a level higher than that matching her current grade, told her that she "must" sign her job description so as not to hold up the procedure, and she did so on 31 January 2007. However, she observes that this document by no means reflects her real duties and responsibilities, and she deplores the fact that the Administration did not consult her during its drafting. She claims that since 2001 she has never had a job description matching her actual duties and that this situation has injured her because, without this document, she cannot apply for reclassification of her post. She contends that the lack of a job description is a pretext for delaying the review of her classification and she adds that, to the best of her knowledge, no date has been set for that review.

According to the complainant, the fact that she was subjected to sexual harassment by her former supervisor is evidenced by the disciplinary sanction imposed on him and by the opinion of the Appeal Board, which had of its own initiative held further inquiries corroborating her statements. She maintains that the very light sanction imposed on her supervisor bears no relation to the seriousness of the injury she has suffered. Like the Appeal Board, she is astonished by the fact that the Organization "punished" her whilst "rewarding" her former supervisor with benefits. She adds that the medical certificates she has produced do not mention the sexual harassment of which she was a victim because of her "understandable reticence" at the time when she told the doctors about her problems.

The complainant also contends that the principle of equal treatment has been breached, since she has received a much lower salary than the former holders of her posts for performing duties similar or identical. Lastly, she takes the Organization to task for failing in its duty to safeguard her physical safety and dignity at her workplace.

Since the complainant wished to revisit the submissions made in her complaint, she alters her pleas: she now seeks the setting aside of the impugned decision “clarified on 12 October 2006” and a promotion to grade G.7 backdated to 11 March 2003. Subsidiarily, she asks the Tribunal to order WIPO to draw up, without delay and with her collaboration, a job description reflecting her actual duties, to reclassify her post (number T141) immediately on the basis of the said job description, to promote her after reclassification with retroactive effect from 11 March 2003, to examine forthwith the application for promotion on merit submitted in June 2006 and to award her compensation for moral injury and “mental suffering” as well as costs in the amount of 20,000 francs.

E. In its surrejoinder the Organization maintains its position concerning receivability. It holds that the complainant’s claims regarding incidents prior to 2006 are time-barred.

On the merits it explains that reclassification of a post is an essentially technical operation for which it is necessary to obtain the opinion of an external United Nations classifier before the case is submitted to the Classification Committee, which then makes a recommendation to the Director General. The normal procedures have been followed with regard to the requests for the complainant’s promotion on merit and the reclassification of her post and she has not been discriminated against. In particular, the request for promotion on merit submitted in June 2006 was forwarded to the Promotion Advisory Board, which recommended that the complainant’s post should be reviewed under the reclassification procedure. However, WIPO points out that a retroactive promotion would be incompatible with the terms of Office Instruction 8/2006.

The Organization emphasises that the complainant took part in the drafting of the job description which she signed in January 2007, even though she did not agree to the grade shown in this document. Turning to the alleged benefits granted to the complainant’s former supervisor, WIPO explains that drawing up an unfavourable performance report on him would have been tantamount to imposing a second disciplinary sanction on him. It adds that an extension of contract beyond retirement age is based on operational considerations and in no sense constitutes a personal reward.

## CONSIDERATIONS

1. The complainant joined WIPO in March 1995 as a clerk at grade G.2. She obtained grade G.4 in November 2000. As from September 2001 she was assigned to the Expenditures Section of the Finance Division.

A few months later, the complainant reported first to the Organization’s Ombudsperson on 8 November 2002, then to the President of the Staff Council on 6 March 2003, that she had been sexually harassed by her supervisor. The case was subsequently brought before the Director General. After a meeting held on 10 March 2003 he decided to take disciplinary action against the complainant’s supervisor – whose actions had thus been denounced – and against another official who had also been accused by the complainant, by imposing a verbal reprimand, which was recorded by placing a note in their personal file.

In the wake of that meeting the complainant was transferred by a decision of 11 March 2003 to the KnowledgeManagementCenter and e-Library, which has since become the Library and Collection of Laws Section, where she was still employed when she lodged her most recent submissions. The complainant, who is responsible for numerous management duties in the library and therefore considers that her current responsibilities correspond to grades G.6, G.7 or even P.2, complains that she has not been promoted since November 2000. She points out that she is still at grade G.4, despite the very favourable assessment of her work by her present supervisors, and she ascribes this standstill in her career to discrimination against her because she denounced acts of sexual harassment within the Organization. She also complains that she has never received any compensation for the moral injury and disruption of her life caused by these acts.

Having requested in vain, by a letter of 6 March 2006, that the Director General review her administrative situation, the complainant lodged an appeal with the Appeal Board on 20 April against the implied decision rejecting her request. In its opinion of 2 June 2006, the members of the Board unanimously found that the Organization had

treated the complainant unfairly and had neglected its duties by not at least concerning itself with her situation in the new post to which she was transferred as from March 2003. The Board considered that she could be regarded as “twice victimised” in that her career had been stymied after the incidents of sexual harassment, and it recommended that the dispute should be resolved amicably. It thus proposed that the Organization should award the complainant compensation in the amount of 30,000 Swiss francs, ensure that she obtained promotion to grade G.5 and that, subject to certain conditions, it should consider promoting her to grade G.6. Failing amicable resolution on those bases, the Appeal Board recommended that the complainant should receive a promotion to grade G.6, backdated at least six months.

By a decision of 11 August 2006 the Director General announced that he wanted the matter to be resolved amicably, in accordance with the Appeal Board’s recommendation. In the event, however, the Organization merely offered the complainant financial compensation, whilst refusing to grant her any promotion as part of the settlement, as was clearly stated in an internal memorandum of 12 October 2006 from the Director of the Human Resources Management Department. The attempt to resolve the matter amicably was therefore unsuccessful.

The complainant challenges the above-mentioned decision of 11 August 2006, as clarified on 12 October, before the Tribunal. Given that her claims have been altered substantially in the course of proceedings, they shall be examined by the Tribunal in their most recent version, namely that contained in the complainant’s rejoinder.

### *Receivability*

2. The facts set out above show that the complainant clearly asked the Director General to promote her and to compensate her for all the injuries which she claims she has suffered, and that she validly lodged an appeal with the Appeal Board, in accordance with the conditions laid down in Staff Regulation 11.1, challenging the implied rejection of that request. The present complaint, which is directed against the decision not to allow her claims after the issuing of the Appeal Board’s opinion, was filed within the time limit set in Article VII of the Statute of the Tribunal. It is therefore receivable in all respects and, contrary to the Organization’s submissions, none of the claims or arguments it contains is time-barred in whole or in part.

In particular, the fact that the complainant did not challenge each and every unfavourable decision concerning her as from her transfer on 11 March 2003 should not prevent her from seeking compensation for the injury she claims to have suffered and also challenging the decision to deny her the promotion she requests.

Moreover, it is clear from the submissions that the complainant did repeatedly object to the situation in which she has been since her transfer in March 2003 and that she complained, in particular, that her grade did not tally with the actual level of her responsibilities.

### *Merits*

3. Contrary to the Organization’s assertions, the evidence on file shows that it has been established that the acts of sexual harassment which the complainant denounced while she was working in the Finance Division between September 2001 and March 2003 did in fact take place.

Paragraph 25 of the Appeal Board’s report indicates that the reality of these acts had been corroborated by the testimony of four other persons who were interviewed by the Board, and that it is also clearly borne out by documents placed in the personal files of the complainant and her former supervisor by the Human Resources Management Department.

Moreover, in imposing a disciplinary sanction on the complainant’s supervisor on account of these acts of sexual harassment, the Organization necessarily acknowledged that they had occurred. Consequently, it cannot now dispute the merits of the complainant’s accusations in this respect without completely contradicting itself and casting major doubts on whether its own decisions regarding its staff are taken in a responsible manner in such a sensitive area as that of discipline.

4. Given the nature and seriousness of the acts in question, the Organization’s reaction to the complainant after she had denounced this sexual harassment was not at all consonant with the duties of any international organisation towards its staff.

5. Firstly, it must be emphasised that, as the Tribunal held in Judgment 2524, an international organisation has a

duty to provide a safe and adequate environment for its staff. In the present case, the complainant was plainly not provided with such an environment during the period in which she was the victim of her supervisor's advances. In addition, as the Tribunal pointed out in Judgments 1609 and 1875, an international organisation is liable for all the injuries caused to a staff member by their supervisor acting in the course of his or her duties, when the victim is subjected to treatment that is an affront to his or her personal and professional dignity. It must be noted that the complainant in this instance has not received any form of compensation from the Organization for the injuries caused by the acts of sexual harassment in question.

6. Secondly, the Tribunal can only express its astonishment at the administrative action taken by the Organization in response to the denunciation of these acts.

The sanction imposed on the supervisor against whom the allegations of harassment were primarily directed – which, as was stated above, was confined to a verbal reprimand and the placing of a note in his file – was clearly not commensurate with the seriousness of his misconduct. What is more, after this sanction the person in question retained his duties with no questions asked.

Furthermore, the Organization does not dispute the fact that this supervisor's performance appraisal covering the period during which he was subjected to disciplinary action was favourable in all respects, including his conduct. The Organization's behaviour towards this official shows little regard for the duty of care that it owed to the victim of the acts of which he was accused, and the Organization's argument that it could not have written a less favourable report without punishing the person concerned twice for the same acts bears the mark of bad faith.

Lastly, the Tribunal cannot fail to be struck by the contrast between the extreme indulgence thus shown to the complainant's former supervisor and the rather harsh attitude adopted at the same time towards the complainant. Not only did she not receive any form of compensation, as was stated above, but after the meeting called by the Director General on 10 March 2003 it was cavalierly decided to transfer her to another service. It was therefore she who bore the brunt of the adverse practical consequences of the situation created by the case against her supervisor.

7. As the Tribunal stated in Judgment 2067, it is incumbent upon any international organisation to treat staff members with dignity and to avoid causing them unnecessary injury.

It is clear from the foregoing that when the complainant denounced the sexual harassment of which she was the victim, WIPO failed in its duty towards a member of its staff.

8. With regard to the complainant's claim that she should receive promotion, the Organization is of course right in saying that the compensation for her injuries should not take the form of being granted a higher grade. The advancement of an official naturally obeys its own logic related to the classification of the job done and the professional merit of the person in question, which has nothing to do with the logic behind compensation for injuries which may have been caused to this person by the international organisation employing him or her.

The Organization is also correct in observing that, although promotions at WIPO are given at the discretion of the Director General, they are nonetheless governed by specific, strictly regulated procedures which are at present defined by Office Instruction 8/2006 (they were formerly defined by Office Instruction 12/1998). These procedures provide that a Classification Committee is responsible for making recommendations concerning the reclassification of posts on the basis of the findings and conclusions of an experienced United Nations classifier. They also stipulate that decisions regarding the advancement of officials must rest on the recommendations of a Promotion Advisory Board, in the case of promotion either as a result of the reclassification of a post or on merit.

9. The present case turns on the question of whether the complainant was unduly prevented from applying for promotion under these procedures.

An examination of the file suggests – although it is impossible to ascertain whether this situation stems from discrimination against the complainant, as she claims, or from mere administrative negligence – that this was objectively the case.

It is true that, as the Organization rightly points out, the complainant has benefited from one measure in her favour since the time of her transfer. Indeed, on 9 May 2005 the Director General decided to grant her a permanent appointment. This point deserves to be underlined, especially as, given the reservations expressed in two of her earlier performance reports, the strict application of one of the Organization's internal management rules would

normally have led to the postponement of this decision.

However, the evidence shows that, with regard to the possibility of applying for promotion, the complainant was treated unfairly.

10. In fact, it appears that she could legitimately have put forward a strong case in favour of promotion.

As far as the level of her responsibilities is concerned, the post she holds, number T141, is today classified at the G.4 level. But the file shows that in practice, owing in particular to the departure of colleagues whose work she took over, the complainant has long been performing the duties of a library “assistant” or “technician” which go far beyond the content of the post as it was initially designed. Her direct supervisor in fact assesses her actual duties as corresponding to a G.6 post. This opinion is set out in a detailed internal memorandum written by this supervisor on 8 June 2005, in which the disparity between the complainant’s present grade and the level of her duties is particularly stressed.

As for the possibility of promotion on merit, it emerges from the complainant’s performance reports after her transfer to this post and from various internal notes concerning her work that her performance was praised. Her supervisors, including the competent Deputy Director General, strongly advocated promotion on merit and her immediate supervisor even emphasised in the above-mentioned memorandum that the complainant’s ability to adapt to her post was perhaps the most impressive he had ever seen among the General Service staff of WIPO.

11. Thus, the request for promotion of the complainant – who, as is recalled above, has not received any promotion since November 2000, in other words for seven years so far – indisputably rests on good grounds.

It must be noted that until now this request has, in a manner which is hard to justify, encountered administrative obstacles which have prevented its proper examination by the competent bodies.

In particular, it transpires that for reasons mainly attributable to the Organization, the complainant did not receive a job description matching the actual duties she has performed for several years until December 2006 – i.e. after the filing of this complaint – whereas, as the Organization itself points out, the existence of such a document is a prerequisite for the examination of any application for the reclassification of a post and hence for any promotion related to such reclassification.

Similarly, the Organization has not furnished the Tribunal with any convincing reasons why consideration of the complainant’s request for promotion was deferred for three successive years between 2004 and 2006. Neither the completely unexplained statement that the complainant “did not meet all the requirements” in 2004, nor the fact (even if it was not to the detriment of the complainant alone) that the Promotion Advisory Board did not meet in 2005, nor indeed that Board’s recommendation in 2006 again to defer consideration of this request – including possible promotion on merit – pending completion of the reclassification procedure, constitutes an acceptable reason in this respect.

12. The Organization’s dilatory attitude to the request for promotion submitted to it must be deemed improper because, if this promotion would have been justified on account of the classification of the post held, the situation thus created would result in unequal treatment to the detriment of the complainant.

As the Tribunal emphasised in Judgment 2313, it is the duty of international organisations to abide by the principle of equality and in particular to comply with its requirement that there be equal pay for work of equal value. As the same judgment stated, if their rules and procedures do not ensure adherence to those requirements in respect of their staff, it is their duty to take remedial steps, whether by way of some general rule or by some specific procedure for the particular case.

WIPO may not therefore legitimately rely on the procedural and time constraints inherent in its internal rules governing the reclassification of posts and the consideration of requests for promotion in order to justify the fact that, several years later, it has still not reached a decision on the complainant’s claims in this respect.

In reality, it appears to the Tribunal that this situation is the result of a breach of these rules which, on the contrary, required that the requests for the reclassification of the post in question and for the complainant’s promotion be considered swiftly. Even if it is assumed that these rules did in fact prevent such rapid consideration, as the Organization implies, it would then have been incumbent upon it at all events to amend them or to apply a special

procedure to this particular case.

The substantial delay in reaching a decision on the complainant's case seems all the more abnormal for the fact that, given the exceptional circumstances of her transfer, the Organization should have taken great care to ensure that she was treated correctly. Of course, as indicated above, the fact that the complainant had been the victim of sexual harassment did not imply that her application for promotion had to receive preferential treatment. But given an international organisation's duty of care to its staff, it is astonishing that WIPO did not take particular pains, in this case, to ensure that the complainant's file was treated with the requisite dispatch.

13. The conclusion from the foregoing – without there being any need to grant the complainant's request that the Tribunal should order the production of various documents in WIPO's possession – is that the Director General's impugned decision must be set aside.

In addition, the Organization's mishandling of the complainant's application for promotion caused her moral injury calling for compensation in addition to that for any other injuries she has suffered.

In her most recent submissions, the complainant has not put a figure to her claims under these various heads. The Tribunal considers, in view of the facts of the case, that all the complainant's injuries may be fairly compensated by the award of 40,000 Swiss francs.

14. The Tribunal will not, however, allow the claim that it should rule on the issue of whether the complainant should be promoted.

As it has repeatedly stated in its case law, in particular in Judgments 929, 1647 and 1874, the grading of a post is a discretionary decision and it depends on evaluation of the work done and the degree of responsibility involved. Such evaluation must be done by persons with particular training and experience in the matter. While a decision to carry out such reclassification may certainly be challenged before the Tribunal, which may set it aside on various grounds of form or of substance, it does not behove the Tribunal to substitute its own assessment for that of the Organization.

Neither should the Tribunal rule in this judgment on the merits of the complainant's claim for promotion on merit, because this is likewise a matter for the Organization to decide at its own discretion. Moreover, it presupposes a comparison of various staff members' files and the consideration of internal management data, of which the Organization alone is capable.

As far as consideration of the complainant's request for promotion is concerned, the case must therefore be sent back to the Organization for it to reach a decision on this request in compliance with the following conditions.

15. Within six months of the date of the delivery of this judgment, the Organization must review the classification of the post and the complainant's application for promotion.

To that end, post T141 shall, at the initiative of the Director General, be evaluated by an experienced external United Nations classifier who offers all the required guarantees of neutrality.

The Tribunal is of the opinion that, contrary to the view put forward by the complainant, this evaluation can be conducted on the basis of the job description issued by the Organization in December 2006. Firstly, the complainant's supervisor, who is fully acquainted with the real content of her post, agreed to this document. Secondly, it was signed by the complainant on 31 January 2007, and while she qualified her agreement by a reservation concerning the classification of the post, she did not dispute the accuracy of the definition of the duties listed therein. Furthermore, drawing up a new job description would intrinsically conflict with the essential aim of seeking a swift settlement of the case.

If the post classifier arrives at the conclusion that the post should be reclassified, he or she shall also have to determine the date on which the contents of this post started to match the new classification proposed.

Depending on the outcome of this evaluation, the Classification Committee shall examine the proposal for reclassification of the post. If reclassification actually takes place, the complainant's application for promotion shall then be submitted to the Promotion Advisory Board, which shall consider it from the point of view of possible promotion on merit. If the date of the next meetings of these advisory bodies does not fall within the above-



mentioned six-month deadline given to the Organization, the latter must convene a special meeting of these bodies for this purpose.

Lastly, it shall be incumbent upon the Director General to decide on the basis of the proposals submitted to him whether to promote the complainant to the new grade thus determined and, if appropriate, to backdate this promotion to the date on which it should have taken place.

16. The complainant, whose claims for the most part have merit, is entitled to costs in the amount of 7,000 francs.

## DECISION

For the above reasons,

1. The decision of the Director General of WIPO of 11 August 2006, as clarified on 12 October 2006, is set aside.
2. The Organization shall, within six months from the date of delivery of this judgment, review the classification of the post and the complainant's application for promotion, as specified in consideration 15 above.
3. If appropriate, WIPO shall promote the complainant, retroactively if need be, in accordance with the terms set forth in that consideration.
4. It shall pay the complainant the sum of 40,000 Swiss francs in compensation for all the injuries suffered.
5. It shall also pay her costs in the amount of 7,000 francs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 15 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

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\* As the complainant subsequently stated that the harassment to which she had been subjected by the colleague in question was not of a sexual nature, the verbal reprimand was removed from his personal file.