114th Session **Judgment No. 3192**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. P.-M. against the World Health Organization (WHO) on 13 July 2010 and corrected on 14 October 2010, WHO's reply of 18 January 2011, the complainant's rejoinder of 29 April, corrected on 17 May, and the Organization's surrejoinder of 3 August 2011;

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, a national of the United Republic of Tanzania born in 1953, joined WHO in 1996 at its Country Office in Tanzania. In 2002 she obtained a grade P-4 post at the WHO Country Office in Gambia. In 2004 she was appointed to a grade P-5 post in Nairobi, Kenya, which she held until November 2005. Between January 2006 and February 2008, she worked as a freelance consultant, during which time she also performed work for WHO under short-term assignments. Following her successful application for the P-5 post of

Advisor, Human Resources for Health, in the Systems Strengthening for HIV (SSH) Unit of the HIV/AIDS Department, the complainant took up her functions at WHO Headquarters in Geneva, Switzerland, in March 2008.

By an e-mail of 17 October 2008 addressed to her first-level supervisor (Mr P.) and her second-level supervisor, the complainant reported that she felt "attacked and harassed" by Ms G., the Team Leader of the Integrated Management of Adult and Adolescent Illness in HIV (IMAI) team, which was also part of the SSH Unit. Referring to various incidents, she accused Ms G. of having repeatedly shown a lack of respect for her both in e-mail communications and in front of colleagues. She stated that she had already brought this matter to the attention of Mr P., but that she felt that the situation had now reached a stage where "independent mediation" was required. As the strained relations between the complainant and Ms G. appeared to be at least partly due to an overlap between the complainant's functions and those of the IMAI team, on 17 December 2008 her second-level supervisor held a meeting with the complainant, together with Mr P. and Ms G. in order to clarify their respective roles.

On 30 January 2009 the complainant wrote to Mr P. to criticise the fact that he had shouted at her in front of colleagues the previous day. She stated that this was not the first time this had occurred and that she considered this as harassment. That same day the complainant requested an appointment with the Staff Counsellor, stating that she would appreciate some advice as she was being "subjected to a terrible working environment and feel[ing] harassed". In February 2009 she also brought the matter to the attention of the Ombudsman.

On 4 September 2009, at a meeting with the Ombudsman, Mr P., the Acting Director of the HIV/AIDS Department and the Director of the Human Resources for Health Department (HRH), the complainant was informed that her post would be abolished, with effect from March 2010, on the grounds that human resources planning was no longer a priority within the HIV/AIDS Department. During that meeting, the Ombudsman proposed that she be transferred to the HRH Department for the remainder of her contract. By a letter dated

27 November 2009 the complainant was informed that, as her post was abolished, her appointment would be terminated and her last day of service would be 16 March 2010. In the event, the complainant was on sick leave from February to July 2010, and her separation date was postponed until 11 August 2010.

Meanwhile, on 15 October 2009 the complainant submitted a formal complaint of harassment to the Headquarters Grievance Panel against both Mr P. and Ms G. In its report dated 16 March 2010 the Grievance Panel summarised her allegations as follows: Mr P. was accused of having subjected her to degrading public outbursts and hostile behaviour, deliberately isolating her, failing to confirm her appointment and thus delaying her salary step increase, and seeking her secondment to another department and the abolition of her post, whilst Ms G. was accused of "[d]iscrediting and hostile behaviour". The Grievance Panel invited both respondents to comment in writing on the allegations against them, and it subsequently interviewed them as well as a number of witnesses with the assistance of an external investigator. The complainant was given the opportunity to comment on their statements.

The Grievance Panel concluded that none of the complainant's allegations should be upheld and recommended that Mr P. and Ms G. receive training to address the communication and conflict management issues identified in its investigation and report.

By a letter dated 16 April 2010 the Director-General informed the complainant that she had decided to accept the Grievance Panel's findings and its conclusions and to dismiss her allegations of harassment, while expressing regret that earlier action had not been taken to address the tensions within the SSH Unit. That is the impugned decision.

B. The complainant contends that the decision to dismiss her harassment complaint is flawed, being based on an investigation report characterised by errors of fact and law, as well as procedural irregularities. She submits that the decisions to abolish her post and not to renew her contract are inextricably linked to the harassment

she experienced. She asserts that her post was irregularly abolished on account of the malice, bias and prejudice of her supervisors. The complainant alleges that she was the victim of a pattern of subtle but persistent intimidation by Mr P. and Ms G., characterised by Mr P.'s degrading public outbursts and hostile behaviour towards her and by Ms G.'s discrediting and hostile attitude towards the complainant and her work. She also submits that, as part of this harassing behaviour, she was deliberately isolated from her area of responsibility, including by the removal of items from her Performance Management and Development System (PMDS), and that the approval and confirmation of her successful probationary period was deliberately delayed by Mr P. with the effect that her within-grade increase request was processed with nine months' delay. She gives a few examples of events showing, in her view, Mr P.'s offensive behaviour towards her relating in particular to a meeting on 29 July 2009 and to a telephone call he made on 17 September 2009. As regards Ms G., she mentions two e-mails, one of 27 January 2009 and the other dated 14 October 2008, which she also views as offensive.

The complainant argues that the investigation by the Headquarters Grievance Panel was improperly conducted and that she was denied due process as a result. In particular, the Grievance Panel failed to interview relevant witnesses without providing any justification for excluding them, and sought information from only three of the 12 witnesses she had identified. Further, it failed to investigate properly the actions and motives of her supervisors by intentionally ignoring relevant facts and misconstruing her statements, and it refused to accept relevant evidence, including her comments on the written replies of Mr P. and Ms G. and a report from her treating physician.

Moreover, she submits that the approach taken by the Grievance Panel was fundamentally flawed in that it failed to determine the facts objectively and in their overall context, as required by the Tribunal's case law. In her view, the Grievance Panel conducted an enquiry which was too narrow, evaluating incidents independently and in isolation. Had it followed the proper methodology, its investigation

would have revealed an extensive pattern of harassment leading to the abolition of her post. As a result of its flawed methodology, the conclusions it adopted are arbitrary and cannot be relied upon. Consequently, the impugned decision, which is based on a flawed report, should be set aside.

The complainant asks the Tribunal to set aside the impugned decision, as well as the decision of 27 November 2009 abolishing her post and ending her appointment, and to reinstate her with full benefits. She also asks the Tribunal to order that a disciplinary investigation be conducted into the actions of Mr P. "and others" in connection with the decision to abolish her post and not to extend her contract, and to find that she was wrongfully harassed by Mr P., Ms G. "and others". She claims material damages in the amount of no less than 250,000 United States dollars for injury to her physical and mental health, moral damages in the amount of 500,000 dollars, costs and interest at the rate of 8 per cent per annum on all amounts awarded to her calculated from 27 November 2009 until the date those amounts are paid in full.

C. In its reply the Organization argues that the complainant's claims regarding the decision to abolish her post and not to renew her appointment are irreceivable for failure to exhaust internal remedies. It points out that she has incorporated arguments, pleas and requests which are not directly relevant to the challenged decision and which relate to a different proceeding currently being pursued before the Headquarters Board of Appeal (HBA). WHO submits that the appropriate course of action is for all aspects of the present complaint relating to the abolition of the complainant's post and the non-renewal of her appointment to be deemed irreceivable and for the Tribunal to examine only the decision to dismiss the complainant's claims of harassment.

On the merits, WHO denies that the Grievance Panel's investigation and report are vitiated and argues that the Grievance Panel was correct in concluding that the matters alleged by the complainant did not constitute harassment as defined in Cluster

Note 2001/9 of 23 March 2001 entitled "WHO Policy on Harassment". Referring to the Tribunal's case law, it submits that the acts and events that are said to constitute harassment in the complaint before the Tribunal largely occurred in the normal discharge of managerial and supervisory duties, and that the complainant has failed to produce any evidence that the actions of Mr P. and Ms G. were dishonest, improper or motivated by ill will.

The defendant considers that the Grievance Panel conducted a prompt, thorough and fair investigation and that it acted within its mandate and in accordance with its procedures in determining what evidence to accept, which witnesses to interview and which questions to ask. It denies that the Grievance Panel only interviewed two witnesses and asserts that the complainant was given ample opportunity to make her case and to "tell her story" with respect to the matters alleged in the harassment complaint, in accordance with her entitlement to due process. WHO also refutes the allegation that information material to the outcome of the investigation was excluded by the Grievance Panel.

Lastly, the Organization argues that the methodology adopted by the Grievance Panel, whereby the complainant was required to discharge the burden of proof by substantiating her specific allegations, was entirely appropriate and in accordance with the case law. While conducting a systematic and meticulous review of the individual incidents cited by the complainant, the Grievance Panel also considered the overall context, for example by reviewing the history of the creation of the complainant's post and the subsequent events which resulted in a duplication of responsibilities between her post and the IMAI team. The Panel's report therefore formed a sound basis for the Director-General's decision to dismiss the complainant's harassment claims.

D. In her rejoinder the complainant presses her pleas. She contests that she was "free to make her case" and contends that the legal advisor who coordinated the investigation was biased. She points out that she has an unblemished work record of over 30 years, so that her

complaint can hardly be reduced to a simple matter of work division. While she acknowledges that she has filed a separate appeal before the HBA concerning the abolition of her post, she draws the Tribunal's attention to the fact that her internal appeal has been pending since October 2010, and asserts that no action has been taken since January 2011. As a result, she contends, her internal appeal may be deemed implicitly rejected.

E. In its surrejoinder WHO maintains its position in full. It argues that there is no basis for the Tribunal to make an exception to the requirements of Article VII of its Statute with respect to the decision to abolish the complainant's post, and points out that the present case is not one in which there has been an inordinate and inexcusable delay in the internal appeal procedure.

CONSIDERATIONS

1. In March 2008 the complainant began her functions as Advisor, Human Resources for Health, in the SSH Unit of the HIV/AIDS Department at WHO Headquarters in Geneva. On 4 September 2009, in a meeting with, among others, the Organization's Ombudsman, she was informed that her post would be abolished with effect from March 2010. The decision to abolish her post "as a result of restructuring" was formally notified to her by a letter dated 27 November 2009. She subsequently filed an appeal against that decision with the Headquarters Board of Appeal (HBA). That appeal is still pending.

2. On 15 October 2009 the complainant submitted a formal complaint of harassment to the Headquarters Grievance Panel, against both her first-level supervisor, Mr P., and the Team Leader of the IMAI team, Ms G. In this complaint she made numerous allegations against Mr P. and Ms G. whom she accused of hostile behaviour. After a detailed analysis of the written submissions, interviews with the parties concerned and ten witnesses, assessments of the allegations in relation to the Organization's Policy on Harassment contained in

the WHO e-Manual at Section III.12.3, entitled Grievance Procedures, and assistance from an external investigator, the Grievance Panel unanimously concluded, in its report dated 16 March 2010, that none of the complainant's allegations could be upheld. It stated, inter alia, that:

> "while the bulk of [the complainant's] allegations were directed at [Mr P.], in fact the evidence indicated that the conflict that resulted in her allegations of harassment lay in the poor professional working relationships that existed between [the complainant] and the IMAI team. This was characterized in part by the poor communication and lack of understanding between [the complainant] and [Ms. G.]."

Its recommendations were as follows:

> "5.2.1 Given that [the complainant's] contract is about to end and her post is about to be abolished, there is little the Panel can recommend to ameliorate the situation. Were the professional relationship between [the complainant], [Mr P.] and [Ms G.] to have continued, external professional interactive personal mediation would have been appropriate to enable underlying needs and tensions to be expressed and mutually recognized and resolved.
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> 5.2.2 The Panel concluded that had [Mr P.] taken a more direct and assertive approach in addressing communication issues between the teams at an earlier point, some aspects of the conflict might have been diffused. This suggests that training in the management of conflict situations between staff members may be appropriate.
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> 5.2.3 One aspect that contributed to conflict within the SSH Unit was [Ms G.]'s style of interaction and communication with others. The Panel considers that it may be appropriate for [Ms G.] to receive personal coaching to assist her to become more aware of the impact of her communications on staff members with different attitudes, values and styles of working."

3. The Director-General, in a letter dated 16 April 2010 – which the complainant impugns before the Tribunal – informed her that she had decided to accept the Grievance Panel's findings and conclusions. She indicated that the recommendations relating to personnel management matters such as staff training and coaching would be brought to the attention of the Director of Human Resources Management for consideration and follow-up as appropriate. With regard to the allegations of harassment, she accepted that "no evidence

of harassment was found", and that as the allegations were not upheld, she would close the case. She also noted additional conclusions that she had reached in relation to the Panel's broader findings, namely, that she accepted that the conflict that resulted in the complainant's allegations of harassment lay in the poor professional working relationships that existed between the complainant and the IMAI team, and that this was characterised in part by the poor communication and lack of understanding between her and Ms G., the team leader. The Director-General stated that she accepted the Grievance Panel's observation that there were "many factors" that lay behind the conflict in the SSH Unit, including those related to the method of working and a misunderstanding or unwillingness to recognise or accept "limitations to the scope of a professional role" and that "organizational pressures and budgetary constraints" played a part in the conflict. She also mentioned the Grievance Panel's reference to "a failure to deal effectively with low-level causes of friction in relationships as they occurred" and "insufficient attempts at communication between teams that were required to work together". The Director-General went on to note that while she considered that some of the Organization's actions were "appropriate and genuine efforts to address tensions", she regretted that "earlier action was not taken to address the tensions arising within the SSH unit […] which [seemed] to have been behind much of the conflict".

4. The complainant challenges the Director-General's decision on the grounds that it violated "multiple staff regulations and international law" by failing to "acknowledge harassment in the work place and retaliation against [her]". She alleges that the Grievance Panel's investigation and report, and consequently the Director-General's decision, contained errors of fact and law. She believes the harassment she endured "led to the impugned decision to abolish her post and to separate her from service". Her main claims for relief are set out under B, above.

5. The complainant has requested an oral hearing so that she may call witnesses. In view of the abundance and sufficient clarity of

the submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

6. Following the complainant's filing in October 2010 of an internal appeal with the HBA challenging the abolition of her post, on 3 December 2010 the Organization submitted a request to suspend that appeal pending the outcome of the Tribunal's judgment on her complaint. The complainant opposed that request to the HBA on 10 January 2011. In a memorandum dated 14 June 2011 the Alternate Chairperson of the HBA informed both parties that the request for suspension was denied as it was not warranted at that time. She requested that "if the [Tribunal] concludes its review of the complaint and in doing so comes to a conclusion that affects the review by the HBA of the merits of the Abolition Decision prior to the completion of the HBA proceedings, […] the parties [should] notify the Board accordingly (and as soon as possible), so that it may decide on an appropriate course of action". In view of this, the Tribunal finds that the complainant's assertion in her rejoinder that she may infer from the fact that no action has been taken on her case since October 2010, that her appeal has been impliedly rejected under Article VII, paragraph 3, of the Tribunal's Statute, is without merit. Her request that her claims regarding the abolition of her post should be joined with her complaint before the Tribunal is therefore not receivable. In Judgment 2948, under 7, the Tribunal recalled:

> "While Article VII, paragraph 3, of the [Tribunal's] Statute permits a complainant to have recourse to the Tribunal '[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it', the Tribunal has consistently held that the forwarding of the claim to the advisory appeal body constitutes a 'decision upon [the] claim' within the meaning of these provisions, which is sufficient to forestall an implied rejection (see, for example, Judgments 532, 762, 786 or 2681)."

In the present case, the complainant is asking the Tribunal to take up the matter regarding the abolition of her post without waiting for the completion of the internal appeal procedure and for the final decision by the Director-General that will result therefrom and to do so within

the framework of her complaint concerning the rejection of her harassment grievance. She has therefore failed to exhaust the internal means of redress as there is no final decision yet for her to impugn. Article VII, paragraph 3, of the Tribunal's Statute therefore does not apply (see Judgment 1452, under 6). As such, all claims regarding the abolition of her post are irreceivable and will not be considered by the Tribunal in the present case.

7. The Tribunal finds the numerous witness statements and testimonies that do not relate directly to the facts of the case – which the complainant has appended to her complaint brief and rejoinder – to be irrelevant as they are based on opinion and not on actual facts or specific events. Also, facts which the complainant has raised for the first time in her complaint shall not be considered.

8. In relating the facts, the complainant claims that she has been the subject of harassment, in particular of degrading public outbursts and hostile behaviour on the part of Mr P., of discrediting and hostile behaviour on the part of Ms G., and that she was excluded from her area of responsibility and duties, which she sees as deliberate isolation.

9. For instance, she argues that the Organization failed to confirm the successful completion of her probationary period and to grant her a within-grade increase in a timely manner. As the Grievance Panel noted, both of the complainant's first and second-level supervisors recorded in her Performance Management and Development System appraisal for 2008/09 their recommendations "[t]o confirm appointment and granting of within-grade salary increase". The Grievance Panel concluded that the complainant's non-receipt of her within-grade increase at the time it was recommended by her supervisors was due to a technical problem which was common to many staff. The complainant has not put forward any factual evidence to the contrary. Therefore, her insistence that this is evidence of harassment is unfounded and her claim in this regard must be dismissed. The Tribunal has consistently held that allegations of

harassment must be supported by specific facts and it is up to the person alleging harassment to prove the facts (see Judgement 2370, under 9, and the case law cited therein).

10. The complainant asserts that the Grievance Panel report is flawed by errors of fact and law. She contends in particular that it "misrepresents the harassment allegation against [Mr P.], characterizing his abusive behaviour as a general conflict between two parties" and "fails to mention the aggressive and abusive behaviour" of Mr P. towards her. Furthermore, the manner in which she was interviewed did not give her the freedom to make her case as she was only asked to answer specific questions posed to her. In her view, the report "intentionally omits material information from the original complaint" and the fact that the Grievance Panel requested information from only three of the 12 witnesses she suggested is evidence of "an attempt to skew the information being provided to the Director-General". The complainant states that "it is clear that the efforts [by the Grievance Panel] to collect information were tailored to result in specific findings, minimizing or ignoring inconsistent information […] such as pertinent and relevant witnesses identified by [her]", and that "[i]t is also clear from [the Grievance Panel's] investigation that the incidents were evaluated in a vacuum and not in their full context", which would have revealed a "clear and extensive pattern of harassment". However, the complainant's analysis of the Grievance Panel's investigation and subsequent report is clearly mistaken. The Organization's statement that "[t]he methodology adopted by the [Grievance Panel] in requiring the complainant to discharge her burden of proof by substantiating her specific allegations with facts was entirely appropriate and was not indicative of an overly narrow approach" is both reasonable and accurate. The Tribunal notes that the information which the complainant contends is material but was ignored during the investigation is a series of unsubstantiated claims, hypotheses, and personal perceptions put forward by the complainant. As such, it is reasonable that the Grievance Panel did not treat such information as facts in its analysis of the case.

11. The complainant also characterises the Grievance Panel's refusal to consider her written comments on the replies of Mr P. and Ms G. and a report from her treating physician as "just two blatant examples of the unjustified attempts to narrow and skew the information provided to the Director General". The Tribunal notes that the report of the complainant's physician is dated 18 March 2010; the Grievance Panel report is dated two days earlier. There is no reason why the Grievance Panel should have accepted the physician's report after the proceedings had been closed. Moreover, the Tribunal considers that the physician's report is reliable insofar as it diagnoses the complainant's illness, but that it cannot be considered authoritative regarding the cause of her illness. Furthermore, it must be noted that the complainant submitted her harassment complaint with annexes and later added two letters which were both accepted by the Grievance Panel. Allowing continuous additional submissions from either party would only serve to slow down and confuse the appeal process.

12. As a result, the plea that the Grievance Panel report is flawed by errors of fact and law is unfounded.

13. With regard to the complainant's contention that "[i]t is clear that the legal advisor who coordinated the [Grievance Panel] investigation was biased by [his] alignment with the organization", the Tribunal notes that it is not supported by any proof. The complainant has not brought a shred of evidence to show that the Grievance Panel was biased in favour of the Organization, and her unsubstantiated assertion that the Grievance Panel "did not want to properly consider the evidence before it, no doubt in part due to the likelihood that had the Panel found the impugned actions amounted to harassment (as they clearly did), one or more of their peers would likely be seriously disciplined by the [Director-General]", is an egregious accusation which she does not support with any facts. Consistent case law holds that:

> "[a]lthough evidence of personal prejudice is often concealed and such prejudice must be inferred from surrounding circumstances, that does not relieve the complainant, who has the burden of proving his allegations, from introducing evidence of sufficient quality and weight to persuade the

> Tribunal. Mere suspicion and unsupported allegations are clearly not enough, the less so where […] the actions of the Organization which are alleged to have been tainted by personal prejudice are shown to have a verifiable objective justification." (See Judgment 1775, under 7.)

This reasoning is applicable in this case.

14. As to the complainant's criticism of the interviews, the Tribunal points out that she fully presented her case in the extensive written submissions and their annexes presented to the Grievance Panel in her appeal. The Grievance Panel was not required to hear an oral version of the complete submissions and was correct in using the interviews as a way to extract additional information on specific points which it deemed necessary for clarification and/or further substantiation.

15. As indicated above, the complainant has put forward in her submissions that her first-level supervisor, Mr P., and the IMAI Team Leader, Ms G., subjected her to harassment. Consistent case law holds that "harassment and mobbing do not require malice or intent, but that behaviour cannot be considered as harassment or mobbing if there is a reasonable explanation for it" (see Judgments 2524, under 25, and 2587, under 8). The complainant did not show that the Grievance Panel's finding and conclusions involved any reviewable error. The situations and events that she cites as examples of mobbing and harassment cannot be considered as such because there is a reasonable explanation for each example. The complainant mentions instances in 2009 when she believed her contributions should have been publicly recognised and used by the Organization for certain projects and presentations. For example, she cites the non-inclusion of her products in the HIV/AIDS Department's list of information products for March 2009 and the non-inclusion of her work in a presentation made by an Assistant Director-General. She provides these as evidence of her "deliberate isolation" and as examples of Mr P.'s lack of consideration for her contributions, professional opinion and work product. During the Grievance Panel proceedings Mr P. disagreed with her interpretation of events and explained that it was not always possible to recognise the complainant's contributions where they had

not led to “tangible achievements”. The Grievance Panel noted that “some aspects of [the matters alleged] were out of [Mr P.’s] hands in that decisions over items included for publication were made at a higher level”. WHO’s assessment of the complainant’s contributions is a technical evaluation that falls within its discretion and the Tribunal will not substitute its opinion where there is no evidence to show that the Organization’s evaluation of her work was mistaken, inconsistent or otherwise flawed (see, for example, Judgment 3082, under 20, and the case law cited therein).

16. Regarding the allegations that, on numerous occasions, Mr P. “ordered” the complainant, as if she were a child, to perform tasks and criticised her work in public, the Tribunal notes that, as the complainant was working in an open space office, it cannot be considered improper for her supervisor to consult with her there on non-sensitive or non-confidential issues. As her supervisor, it was his responsibility to direct her work and it was not unreasonable of him to request work-related actions and/or to comment on what she was working on. There is nothing to indicate that this was done in a demeaning or humiliating manner, or that his requests were not made in good faith or were made with any intention other than the proper execution of his managerial duties. In addition, the complainant’s apparent refusal of Mr P.’s request that she send copies of the documentation requested by the IMAI team relating to the 29 January teleconference (because she did not believe that the lack of information was the true reason they had not participated in the teleconference) was unreasonable, bordering on insubordination. It is worth pointing out in this regard Judgment 318, in which the Tribunal stated: “The main grounds for the impugned decision are that the complainant, who would brook no challenge to his views, proved unable to obey his supervisor’s instructions and adapt to the methods of the Organization.” While it is not commendable that Mr P. raised his voice to her on that occasion, it is to be noted that Mr P. suffered from hearing problems and may not have been aware of the loudness of his voice, and also that the situation might have been avoided had the complainant simply followed the instructions she was given.

17. With respect to the allegation of harassment related to a telephone call of 17 September 2009, the complainant asserts that Mr P. should not have called her to ask whether or not she had made a decision regarding the offer to transfer her to the HRH Department. She submits that she felt harassed, that he made the call at an inappropriate time and that he spoke to her in an aggressive manner. While it was inconvenient for the complainant that the call came while she was on her way to a meeting, the phone call was not irregular, particularly considering that the agreed-upon date when she would tender a decision had passed over two weeks before and because Mr P. had been asked that same morning by the Assistant Director-General to whom he reported what the complainant had decided with regard to the transfer. The call was made as part of the regular execution of his managerial duties and cannot be characterised as harassment.

18. The complainant further alleges that she was deliberately isolated as a consequence of being excluded from her area of responsibility. The Tribunal finds that the Organization's decisions regarding the reorganisation of the Department and reassignment of tasks regarding pre-service education were reasonable and justified. The division of responsibilities between the complainant and IMAI team was agreed upon during the December 2008 meeting. The limitation of the complainant's role in specific areas was consistent with that agreement and it appears to be a reasonable organisational measure. It should be noted that the complainant began her work as Advisor in the SSH Unit following a reorganisation of the HIV/AIDS Department which led to the creation of another post in the IMAI team which would share, with the complainant's post, some of the functions related to pre-service education. The complainant submits that she was notified by Mr P. even in mid-2008 that certain functions listed in her PMDS should be postponed as they would eventually be handled by a colleague who would join the IMAI team. In a December 2008 meeting the complainant, her second-level supervisor, Mr P., and Ms G., discussed the division of duties between the complainant's post and that of a colleague, Ms F., who would begin work in the

IMAI team in January 2009. It was agreed that the IMAI team would be responsible for the development of pre-service education content and that the complainant would be responsible for capacity building in collaboration with her colleagues in the IMAI team. Mr P., in his written response submitted to the Grievance Panel, stated "[The complainant] ignoring the agreement leads to her continued refusal to accept wording that recognizes the need to work in sequence, developing first the technical content that we, as HIV Department, would need to include in curriculum reform (which is under the purview of the IMAI team) before we engage in discussions on the topic". It was the defendant's belief that the complainant thought she should play a bigger role than the Organization was willing to give her, and that this added to the tension between the departments. The Grievance Panel concluded that while it was the complainant's genuinely held view that she would take the lead in the area of pre-service education, this view was not shared by the HIV/AIDS Department or within the SSH Unit, where a clear division of responsibilities in this area was sought. The Grievance Panel considered that this "difference in perception [had] been a driver for much of the conflict experienced within the unit". The allegation of deliberate isolation is therefore unfounded.

19. The complainant refers to a meeting of 29 July 2009, and asserts that Mr P. exhibited an "unreasonable and offensive behaviour towards [her]" in that, after arriving at the meeting, Mr P. allegedly ignored her and asked the Acting Director of the Health Systems and Services Cluster to speak with him privately. Outside of the room, Mr P. asked the Acting Director why the complainant was present, and was informed that the meeting was of a general nature and everyone was invited. They returned to the meeting and it proceeded as normal. The complainant says Mr P. ignored her and that she was silent throughout the meeting. It is plain from the evidence that Mr P. was upset about the situation as he had not expected so many people to be present at the meeting and, in particular, was unaware that the complainant would also be attending. Neither did he know that the complainant had made preliminary proposals for a work plan,

which she sent to the Acting Director without his clearance. However, the Tribunal finds that there is no evidence that Mr P. behaved in an unreasonable or offensive manner. Furthermore, it should be noted that it appears that the complainant did not give proper regard to the office hierarchy, which caused some breakdowns in the natural lines of communication and contributed to the office tensions. Essentially, it should be noted that the complainant's failure to recognise her supervisor's authority largely accounts for a situation which, however regrettable, did not constitute harassment (see Judgment 2468, under 12).

20. The Tribunal is in agreement with the unanimous conclusion of the Grievance Panel, which found that there was no evidence of offensive or hostile behaviour towards the complainant in the Organization's attempt to transfer her to HRH as her post had to be abolished. The Tribunal will limit its reasoning to the assessment of the Organization's behaviour to establish whether or not that behaviour could be considered as harassment. The evidence clearly shows that the contested behaviour was an attempt to resolve the organisational problems stemming from various difficulties within the SSH Unit and from the project budget cuts.

21. With regard to the allegations against Ms G., the complainant cites instances when she felt that the Team Leader did not treat her in a respectful way. Specifically, she mentions an e-mail of 27 January 2009 from Ms G. to Mr P. in which the Team Leader wrote: "IMAI is how we support countries on task shifting to nurses. You are copied on more recent emails with this as trailing. We don't have time to waste on parallel efforts. Are you aware and supporting this? We are really swamped and do not have […] staff time to waste, [Ms I.] is clearly anti-IMAI, as you know." The complainant argues that Ms G. was referring to the complainant and her work as a parallel effort that was a waste of time. The Grievance Panel found no indication that Ms G. was referring to the complainant personally and the Tribunal agrees that the message is general in

nature and does not specify the complainant at any part. With respect to an e-mail from Ms G. to the complainant dated 14 October 2008, the complainant takes issue with the tone, considering it "very rough". The e-mail states that "[E.], I am speaking about the contribution from our unit: I am aware that this is now a HSS proposal (you don't need 'to shout in capitals'). The question relates to the contribution which you organized; it did not take into account earlier discussions and what was written before […]. I spent considerable time briefing you on the sad history of task shifting, the politics around it […] the need to be careful in how IMAI is presented […]. These seem to have been ignored, potentially to our hazard." The Tribunal is of the opinion that this e-mail was reasonable, justified, and not offensive in tone, and as such cannot be considered bullying or constituting harassment.

22. In view of the foregoing and as said in Judgment 2587, under 10, which holds true also in the present case, the Tribunal, having examined all the facts together, concludes that the complainant has failed to establish that harassment has occurred. The working relations were tense but not due to misconduct or abnormal behaviour by the complainant's superiors. It should be noted that the situation could have been avoided if management had been more sensitive to the complainant's personal needs and history when dealing with her requests and formulating their replies. However, the Tribunal recognises that it is not always possible to cater to the needs of each individual employee, as the product or result of the work being done is often justifiably considered a higher priority over the individual's personal interests, and therefore it cannot declare that any breach of care has occurred.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 November 2012, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Giuseppe Barbagallo
Dolores M. Hansen
Michael F. Moore
Catherine Comtet