



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2010/039  
(UNAT 1645)  
Judgment No.: UNDT/2011/022/Corr.1  
Date: 26 January 2011  
English  
Original: French

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**Before:** Judge Jean-François Cousin  
**Registry:** Geneva  
**Registrar:** Víctor Rodríguez

EDWARDS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Laurence Fauth

**Counsel for Respondent:**  
Linda Starodub, UNODC

This Judgment has been corrected pursuant to article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. The Applicant contests the decision of the Secretary-General refusing to compensate her for damage sustained as the result of harassment she claims to have suffered and for breach of duty by the Administration in failing to provide a safe and healthy working environment.

2. She requests the Tribunal to rescind the Secretary-General's decision and order the Respondent to pay her, in reparation for the damage suffered, an amount equal to four years' salary with interest calculated from 21 August 2006. She also claims reimbursement of her legal costs, as well as compensation for the delay in the appeals procedure.

## **Facts**

3. The Applicant entered the service of the United Nations in the Economic and Social Commission for Asia and the Pacific on 29 May 1999, as an Editor at level P-2. She was promoted to level P-3 in 2001.

4. With effect from 31 January 2002, the Applicant was appointed to the United Nations Office at Vienna ("UNOV") where she was assigned to the Editorial Control Unit ("ECU"), in the Publishing, Referencing and English Section, ("PRES"), which was part of the Conference Management Service ("CMS"). In 2002 and 2003, the Chief, ECU and the Chief, CMS were her first and second reporting officers respectively.

5. On 1 July 2004, one of the staff members of ECU was promoted to the post of Chief of that Unit, thus officially becoming the Applicant's first reporting officer.

6. On 7 October 2004, the Applicant reported to the Chief, PRES that the new Chief, ECU had verbally abused her. The Chief, PRES then recommended that she refer the matter to the Staff Counsellor for mediation.

7. On 7 June 2005, the Applicant contacted the Staff Counsellor to inform him that she was suffering continuing harassment and to ask him, among other things, to whom she could submit a complaint for harassment.

8. On two occasions, 10 and 20 June 2005, the Applicant informed the Medical Service of the Vienna International Centre that she was the victim of harassment.

9. On 22 June 2005, the Applicant informed the Chief, PRES that her relations with the Chief, ECU had deteriorated. On the same day, she met with the Chair of the Staff Council, then on 28 June 2005 with the Ombudsman, concerning the harassment she claimed to be suffering.

10. From 29 June to 1 July and then from 13 July to 13 November 2005, the Applicant was placed on medical leave.

11. By memorandum dated 31 October 2005, the Medical Service of the Vienna International Centre notified the Administration that the Applicant's treating specialist considered that she could resume work subject to certain conditions involving adjustments to her working hours and productivity targets. It was also noted in the memorandum that with effect from 31 October 2005, the Applicant would resume her duties working from home.

12. In the autumn of 2005, the Chief, PRES offered the Applicant a telecommuting compact. On 1 November 2005, the Applicant asked whether it was necessary to amend the compact in the light of the "recommendation of the Medical Service". The Chief, CMS replied that no amendment to the compact was necessary and that the Medical Service would resolve any problems on a case-by-case basis. The Applicant contends that the Chief, PRES also gave her to understand that she could in the future report on her work to one of her colleagues rather than to the Chief, ECU. On 10 November 2005, the Applicant agreed to and signed the telecommuting compact for the period from 14 November 2005 to 12 May 2006.

13. By email of 23 November 2005, the Chief, ECU informed the Applicant that she was free to consult one of her colleagues on any topic but where the distribution of work and administrative questions were concerned, she, the Chief, would continue to act as her supervisor and first reporting officer.

14. From 6 December 2005 to 8 January 2007, the Applicant was again placed on medical leave.

15. Following a request by the Applicant, the President of the Staff Council informed her on 14 March 2006 that she could submit a complaint for harassment to the Panel on Discrimination and Other Grievances, which she did on 21 March 2006.

16. On 4 May 2006, the Chief, ECU and the Chief, PRES in their respective capacities as the Applicant's first and second reporting officers co-signed and forwarded to the Administration, in the form of a "Note for the File", an appraisal of the Applicant's performance for the period from 1 April 2005 to 31 March 2006. They pointed out, among other things, that the Applicant's productivity was "clearly unacceptable" having regard to her level and her several years of service.

17. On 26 June 2006, the Panel on Discrimination and Other Grievances gave its report. In the report it explained that it was unable, based on the materials available to it, to conclude that the Applicant's medical condition was the result of the harassment she claimed to be suffering. It suggested, however, that the Applicant be transferred to a different service in an area other than editing and invited her to actively pursue that possibility, with the help of the Administration.

18. On 5 July 2006, in response to a request by the Applicant, the Human Resources Management Service ("HRMS") informed her that she could contest the appraisal given by the Chief, ECU and the Chief, PRES before the Joint Appeals Board ("JAB"). The next day, the Applicant stated in an email to HRMS that she intended to contest the "Note for the File" by the Chief, ECU and the Chief, PRES, her performance appraisal for the period 2004-2005, and the findings of the Panel on Discrimination and Other Grievances; she also wanted

action to be taken on her complaint for harassment and asked to whom she might forward it.

19. On 11 July 2006, in a document addressed to the Panel on Discrimination and Other Grievances and HRMS, the Applicant contested the findings of that Panel.

20. In response to her request of 6 July, HRMS informed the Applicant on 13 July 2006 that she had the option of appealing against the inclusion of the “Note for the File” by the Chief, ECU and the Chief, PRES in her Official Status File, or of challenging its contents in a document that would be placed, together with the “Note for the File”, in her Official Status File. She could not, however, rebut the Panel’s findings. As to her performance appraisal for the period 2004-2005, the Applicant was required to sign her appraisal before she could begin a rebuttal process.

21. On 14 July 2006, the Applicant asked HRMS to whom she might address her complaint for harassment, since “the Panel on Discrimination and Other Grievances ha[d] proved incompetent to deal with [it]”. HRMS replied on 18 July 2006 by providing her with a list of conflict resolution bodies.

22. The Chief, ECU retired at the end of July 2006.

23. In an email to HRMS on 15 August 2006, the Applicant contested the fact that she could not rebut the findings of the Panel on Discrimination and Other Grievances. HRMS having confirmed that information, the Applicant reiterated her objections in an email of 16 August.

24. On 21 August 2006, the Applicant submitted to the Secretary-General a request for review contesting the findings of the Panel on Discrimination and Other Grievances, the “Note for the File” by the Chief, ECU and the Chief, PRES, the failure of HRMS or the CMS to take any action on her allegations of harassment and the disregard by those two services of the recommendation of her treating specialist for adjustments to her working hours and productivity targets.

25. In September 2006, the Chief, CMS convened a meeting at which the question of withdrawal of the “Note for the File” by the Chief, ECU and the Chief, PRES was discussed.

26. On 13 November 2006, in response to a request by the Applicant that the “Note for the File” be withdrawn from her Official Status File, HRMS informed her that it had no authority to withdraw a document at the request of a staff member. It repeated the information provided on 13 July 2006, namely that the Applicant could either contest the inclusion of the “Note for the File” by the Chief, ECU and the Chief, PRES in her Official Status File, or challenge its contents in a document that would be placed in her Official Status File together with the “Note for the File”.

27. The Applicant lodged an appeal with the JAB on 1 December 2006.

28. On 11 June 2007, she sought the disqualification of one of the members of the JAB, which request was rejected by the Presiding Officer of the Board on 21 June 2007.

29. In its report dated 28 March 2008, the JAB, pointing out that the Panel on Discrimination and Other Grievances was an informal conflict resolution mechanism, concluded that the lack of a formal procedure for dealing with allegations of harassment amounted to a serious lacuna. According to the JAB, that lacuna justified payment of compensation to the Applicant equal to one month’s net base salary. The JAB further recommended that the “Note for the File” by the Chief, ECU and the Chief, PRES be withdrawn from her Official Status File and that her other pleas should be rejected.

30. By letter dated 28 July 2008, the Applicant was informed of the Secretary-General’s decision to reject her appeal. He considered that the handling of her complaint of harassment had not violated her rights to due process, but that the inclusion of the “Note for the File” in her Official Status File was such a violation. He had accordingly decided to withdraw the “Note for the File” from the Applicant’s Official Status File and reject the rest of her appeal.

31. The “Note for the File” by the Chief, ECU and the Chief, PRES was withdrawn from the Applicant’s Official Status File in August 2008.

32. Having been granted three extensions of time, the Applicant submitted an application to the former United Nations Administrative Tribunal on 21 November 2008 against the decision to reject her internal appeal. On 2 June 2009, having requested and been granted two extensions of time by that Tribunal, the Respondent submitted his Answer to the Application. The Applicant, who obtained two extensions of time, submitted her observations on 11 August 2009.

33. Pursuant to Appendix D to the Staff Rules, the Applicant submitted a claim for compensation to the Advisory Board for Compensation Claims in the Event of Death, Injury or Illness (“ABCC”). On 12 October 2009, the Board recommended that the Secretary-General acknowledge that the Applicant’s illness was attributable to the performance of official duties on behalf of the United Nations and, consequently, compensate her for the medical costs she had incurred and the days of medical leave she had taken between 13 July 2005 and 21 March 2007. By memorandum dated 21 December 2009, the Applicant was informed of the Secretary-General’s decision to grant her claim for compensation following the recommendation of the ABCC.

34. As the case could not be decided by the former UN Administrative Tribunal before its abolition on 31 December 2009, it was transferred to the Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253.

35. On 3 June 2010, the Tribunal informed the parties that it did not consider a hearing necessary, and gave them one week in which to state their views on that question. Neither party raised any objection.

36. On 4 November 2010, at the Tribunal’s request, the Applicant filed supplemental comments.

#### **Parties’ contentions**

37. The Applicant’s contentions are:

a. Both the recommendations of the JAB and the Secretary-General's decision of 28 July 2008 are vitiated by errors of fact and law as neither the Board nor the Secretary-General decided the issue of whether she had been harassed by the Chief, ECU. The Secretary-General never, therefore, answered her request for review and, though the JAB found that the inclusion of the "Note for the File" by the Chief, ECU and the Chief, PRES in the Applicant's Official Status File breached her right to due process, it did not, as it should have done, decide of its own motion whether that act constituted an act of harassment, or refer the case back to the Administration for formal review. However, by virtue of staff rule 101.2(d) in force at the time of the facts, and the Secretary-General's information circular ST/IC/2003/17 dated 11 March 2003, all forms of harassment are prohibited and the Administration has a duty to respond promptly to complaints by staff members. She was harassed by the staff member who was to become Chief, ECU with effect from November 2003—at a time when that staff member was not yet her first reporting officer and despite the fact that she had been designated as the Applicant's "mentor" — up until mid-2006, and the Administration cannot claim to have lacked knowledge of that situation. Furthermore, the proceedings before the Panel on Discrimination and Other Grievances was vitiated by irregularities in that the Panel failed to interview her, nor did it interview witnesses she had asked to call. Consequently, the Tribunal must now conclude that the acts of harassment have been established and award her damages or, failing that, refer the case back to the Respondent for review;

b. The JAB was also in error in considering that the Administration had made "a number of reasonable efforts" to enable her to return to work in a safe and healthy working environment, as it had a duty to provide such an environment. Furthermore, the JAB should have found that the Administration had, in bad faith, ignored the recommendation about her hours of work and productivity targets as well as the decision of the Chief, PRES that she should no longer report to Chief, ECU. That disregard caused her health to deteriorate;



c. Because of the Administration's errors, the Applicant's professional reputation has been damaged and her career prospects compromised, as evidenced by the fact that the Chief, PRES was a member of a selection panel that decided to appoint an applicant other than herself to a vacant post in the ECU.

38. The Respondent's contentions are:

a. The Administration offered the Applicant a safe and healthy working environment and responded in an appropriate manner to her allegations of harassment. Among other things, it arranged mediation with the Staff Counsellor, and then the President of the Staff Council suggested that she should submit the matter to the Panel on Discrimination and Other Grievances. In spite of the Panel's findings, the Administration continued its good faith efforts by exploring the option of offering the Applicant a different reporting line and proposing a telecommuting compact. The Administration also observed the recommendation of the Medical Service because it agreed that the Applicant's work would not be subject to productivity targets and made adjustments to her duties and working hours. In addition, during her medical leave, the Applicant was authorised on seven occasions to travel outside the duty station, which was yet another concession on the part of the Administration;

b. The Applicant has not substantiated that she was the victim of harassment although she bears the burden of proof;

c. Legal costs can be awarded only in exceptional circumstances, and none exist in the present case.

### **Judgment**

39. The Applicant is seeking compensation for damage sustained as the result of harassment she claims to have suffered in the workplace. She maintains, first, that the Administration failed to take all necessary measures to respond promptly to her complaint of harassment, and that it was in error in not finding that acts of

harassment had been established. The Tribunal must, therefore, rule on whether the Applicant's allegations are substantiated having regard to the provisions applicable at the time the events took place.

40. Staff regulation 1.2(a), which sets out the core values staff members of the Organisation must respect, provides:

Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.

41. Furthermore, staff rule 101.2(d) provides: "Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited."

42. The Secretary-General's information circular ST/IC/2003/17 entitled "Our core values prohibit discrimination and harassment", which implemented the two provisions referred to above, provides:

3. The Organization cannot tolerate discrimination and harassment in any form. Any infraction will be taken very seriously.

4. I expect all managers to take or initiate prompt and appropriate action in collaboration with the Office of Human Resources Management at Headquarters or the local Human Resources office at Offices away from Headquarters whenever an infraction occurs. Depending on the facts of the case, action may take the form of clear and specific guidance to the individuals concerned or other type of managerial action, sensitivity training and awareness raising, and/or disciplinary proceedings.

43. Lastly, the Secretary-General's information circular ST/SGB/2005/20, which came into force on 1 December 2005 and introduced a self-administered learning programme "for the purpose of strengthening accountability in the Secretariat and raising awareness among staff of their roles and responsibilities for creating and maintaining a workplace free of harassment, sexual harassment and abuse of authority", reiterates that "the Organization is fully committed to

ensuring that any allegation of harassment, sexual harassment and/or abuse of authority will continue to be taken seriously and will be fully investigated”.

44. The above-cited provisions clearly show that at the time of the acts characterised by the Applicant as harassment, the Administration was under a duty to take prompt action on her complaint for harassment.

45. The Applicant contends that, from late 2003 to July 2006, she was subjected to harassment in the workplace by the Chief, ECU, who was her direct supervisor and first reporting officer from 1 July 2004, and that, on 7 October 2004, she reported to the Chief, PRES that the Chief, ECU had verbally abused her. It is not disputed that the Chief, PRES then suggested that she refer the matter to the Staff Counsellor for mediation.

46. Starting in June 2005, the Applicant contacted the Medical Service of the Vienna International Centre on several occasions. She claimed that her health problems were due to the harassment she was suffering and she was placed on medical leave a number of times between 29 June 2005 and 8 January 2007.

47. On 22 June 2005, the Applicant notified the Chief, PRES of the deterioration in her relations with the Chief, ECU and, on the same day, met with the President of the Staff Council to inform him that she believed she was the victim of harassment. On 28 June 2005, the Applicant met with the Ombudsman.

48. On 31 October 2005, the Medical Service wrote to the Administration informing it that the Applicant's treating specialist considered that she could resume work subject to certain conditions, after which the Chief, PRES offered her a telecommuting compact, which the Applicant accepted on 10 November 2005.

49. After consulting the President of the Staff Council, on 21 March 2006, the Applicant filed a complaint of harassment with the Panel on Discrimination and Other Grievances, which submitted its report three months later, on 26 June 2006. While the Panel found that the documents on the file did not bear out the

existence of acts of harassment, it recommended that the Administration assign the Applicant to another service, where the pace of work would be less intense.

50. On 6 July 2006, the Applicant asked HRMS what action was being taken on her complaint for harassment, and that Service replied on 13 July 2006.

51. The above account shows that, when the Applicant informed her supervisors that she wished to file a complaint for harassment against the Chief, ECU, the Administration responded to her requests for information and took care to direct her to the competent services. It is also established that, following the filing of the complaint with the Panel on Discrimination and Other Grievances, that Panel gave its report within a reasonable time and recommended that the Applicant be offered another post.

52. The Applicant maintains that the procedure before the Panel on Discrimination and Other Grievances is vitiated by irregularities in that the Panel did not question her, nor did it hear the witnesses she had asked to call.

53. Administrative instruction ST/AI/308/Rev.1 entitled “Establishment of Panels on Discrimination and other Grievances” dated 25 November 1983, sets out the terms of reference of the Panels on Discrimination and Other Grievances and the procedure to be followed. The instruction provides, among other things, that the Panels shall endeavour to act expeditiously, that they may require the staff member concerned to submit a written statement giving details of the grievance, and that they shall have access to all documents which, in their opinion, might be pertinent. The instruction does not, on the other hand, impose any obligation on them to hear witnesses called by either party.

54. In the present case, the Tribunal notes that the Applicant submitted an eight-page document to the Panel on Discrimination and Other Grievances giving details of her allegations, as well as a six-page chronology giving her version of the facts. Furthermore, throughout the entire investigation, from 21 March at the earliest to 26 June 2006 at the latest, the Applicant was on medical leave. The Panel therefore exercised its powers of discretion in deciding that it was not

necessary to summon the Applicant, who was on medical leave, to appear, or to call other witnesses.

55. In support of her claim that she was the victim of harassment by the Chief, ECU, the Applicant contends, first, that her workload was excessive and that she was given productivity targets too high for her to achieve. However, the fact that the Administration demands high productivity from its officials cannot of itself be regarded as an act of harassment and other supporting elements are needed; in this case there are none, as the Applicant has not shown that the workload required of her was greater than for other staff members.

56. The Applicant alleges that the fact that the future Chief, ECU was designated as her mentor from November 2003 at a time when she was not yet the applicant's supervisor was an act of harassment on her part. But such a decision can obviously only have been taken by the person who was the Applicant's supervisor at the time, not the person who would later become her supervisor.

57. Lastly, the Applicant contends that the inclusion of the "Note for the File" drawn up by the Chief, ECU and the Chief, PRES in her Official Status File demonstrates the harassment to which she was subjected by the Chief, ECU. However, that "Note for the File", which was jointly signed by the Chief, PRES and the Chief, ECU, is not disrespectful in content and the comments on the Applicant's performance in it are carefully worded.

58. The facts as described above show that the Applicant has not established either that the Administration failed to take appropriate action on her complaint of harassment, or that she was the victim of harassment by the Chief, ECU. It remains for the Tribunal to determine whether, as the Applicant maintains, the Administration failed in its duty to guarantee her a safe and healthy working environment.

59. The principle whereby the Administration is bound to provide a working environment conducive to the health of its staff members is enshrined in staff regulation 1.2(c) in force at the time of the facts in this case. Under that provision, which sets out the basic rights and duties of the Organization's staff members,

“[t]he Secretary-General shall seek to ensure ... that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them”. The duty of safety and security imposed on the Organization seeks to ensure the physical integrity of staff members required by regulation 1.2(c) referred to above.

60. In its Judgments No. 1125, *Mwangi* (2003), and No. 1204, *Durand* (2005), the former UN Administrative Tribunal took the view that staff regulation 1.2(c) codified a duty of protection having the value of a general principle of law. In the former Judgment, it stated:

... even were such obligation not expressly spelled out in the Regulations and Rules, general principles of law would impose such an obligation, as would normally be expected of every employer. The United Nations, as an exemplary employer, should be held to higher standards and the Respondent is therefore expected to treat staff members with the respect they deserve, including the respect for their well being.

61. Moreover, in Judgment No. 1194 (2004), the former Administrative Tribunal recognised that the Organization had a duty to “maintain a healthy working environment” which extended to protection of staff members’ physical and psychological integrity.

62. Finally, the “Standards of conduct for the international civil service”, drawn up by the International Civil Service Commission in 2001, which the General Assembly noted with satisfaction in resolution 56/244 and which the Secretary-General appended to his bulletin ST/SGB/2002/13, state:

15. Managers and supervisors are in positions of leadership and it is their responsibility to ensure a harmonious workplace based on mutual respect; they should be open to all views and opinions and make sure that the merits of staff are properly recognized. They need to provide support to them; this is particularly important when they are subject to criticism arising from the carrying out of their duties. Managers are also responsible for guiding and motivating their staff and promoting their development.

63. Taken together, the instruments cited above show that the Organization had a duty to guarantee a working environment conducive to the physical and psychological integrity of its staff members. That duty was later restated, in terms

close to those of bulletin ST/SGB/2002/13, in the Secretary-General's bulletin ST/SGB/2008/5 dated 11 February 2008, which provides:

2.2 The Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment ...

3.2 Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct.

64. In the present case, faced with the discordant atmosphere between the Applicant and the Chief, ECU, the Applicant's second supervisor, in other words the Chief, PRES, who told the JAB that she was perfectly aware of that discordant atmosphere, admitted that she had been unable to persuade the Chief, ECU, who also reported to her, to alter her behaviour towards the Applicant.

65. In addition, the ABCC recommended to the Secretary-General on 12 October 2009 that the Applicant's illness should be recognised as attributable to the performance of official duties in the service of the United Nations. By accepting that recommendation, the Secretary-General necessarily admitted that the Applicant had indeed been harmed by her working environment.

66. It is clear from the foregoing that, in failing in its duty to create working conditions conducive to the health of the Applicant, the Administration has incurred liability.

67. The Applicant claims an amount equal to four years' salary, together with interest, as compensation for the moral and material damage she has suffered.

68. Taking the material damage first, the memorandum of 21 December 2009 shows that the Secretary-General decided to compensate the Applicant for the medical costs she had incurred in obtaining treatment for her illness as well as re-crediting her with the days of medical leave she took from 13 July 2005 to 21 March 2007, a total of 339 days' leave. The Tribunal considers that the Applicant has thus been fully compensated for the material damage suffered.

69. Turning to the moral damage, the Applicant maintains that her career prospects have been compromised as the Chief, PRES was a member of the selection panel that decided to appoint a candidate other than herself to a vacant

post in the ECU. The damage she claims to have suffered, however, which the Tribunal regards as more material than moral, is in any event unconnected with the breach of duty by the Administration found by the Tribunal above.

70. The Tribunal however considers that, while the Applicant has been compensated for the material damage occasioned by the illness from which she suffered, that illness, which was at least partly caused by the Administration's breach of its duty to create working conditions conducive to the Applicant's health, caused her moral damage in that it resulted in impairment to her living conditions. She should thus be awarded, under this head, compensation equal to two months' net base salary.

71. In her supplemental comments filed on 4 November 2010, the Applicant claims compensation for delays that have occurred in the proceedings.

72. The Tribunal recalls that excessive delay in dealing with the administrative appeal of a staff member can be such as to violate his right of recourse (Judgment 2010-UNAT-021, *Asaad*). The file shows that the Applicant submitted her request for review to the Secretary-General on 21 August 2006 and that over four years have elapsed between that request and the date of this Judgment. Thus, even taking into account the successive extensions of time the Applicant has been granted, the Tribunal considers that this abnormally long overall time period has violated her right to effective recourse and justifies the grant to the Applicant of compensation equal to half of one month's net base salary.

73. Lastly, the Applicant claims reimbursement of her legal costs incurred in this case.

74. Article 10, paragraph 6, of the Statute of this Tribunal authorises it to make an order for costs against a party only where it has manifestly abused the Tribunal's proceedings. In this case, the Tribunal has found no abuse of proceedings on the Respondent's part and there is no basis, therefore, on which to award costs against him under that provision.

75. This Tribunal must also examine whether the Applicant, who filed her Application with the former UN Administrative Tribunal, could have claimed her



legal costs under the former internal justice system. It should be remembered that, according to its settled case law, the former UN Administrative Tribunal awarded costs only in exceptional cases, “if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal” (see Judgment No. 237 of the former UN Administrative Tribunal, *Powell* (1979)).

76. The Tribunal therefore considers that if the former Tribunal had heard the Application, it would have taken the same decision as this Tribunal to dismiss it.

### **Decision**

77. In view of the foregoing, the Tribunal DECIDES:

- 1) The Respondent is ordered to pay the Applicant compensation equal to two and a half months’ net base salary applicable at the date of this Judgment;
- 2) The above-mentioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable, plus five per cent per annum with effect from 60 days following the date this Judgment becomes executable, until payment of the said compensation;
- 3) All the Applicant’s other claims are dismissed.

*(Signed)*

Judge Jean-François Cousin

Dated this 26<sup>th</sup> day of January 2011

Entered in the Register on this 26<sup>th</sup> day of January 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva