

R. C. e S. (No. 2)

v.

WHO

141st Session

Judgment No. 5155

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms M. R. C. e S. against the World Health Organization (WHO) on 6 September 2021, WHO's reply of 14 December 2021, the complainant's rejoinder of 16 February 2022, WHO's surrejoinder of 18 May 2022, the complainant's additional submissions of 9 July 2022 and WHO's final comments thereon of 10 October 2022;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant contests the decision not to select her for the position of Head of the WHO Office in Dakar, Senegal.

Facts relevant to the present complaint are to be found in Judgment 4687, delivered on 7 July 2023. Suffice it to recall that the complainant joined WHO in 1998 and she served in various positions thereafter. In May 2011, she was placed on the global roster of eligible candidates for appointment as Head of WHO Country Offices. In September 2015, she was appointed as Director, Communicable Diseases Cluster in the WHO Regional Office in Brazzaville, Republic

of the Congo, at grade D.1, a position that she held until her separation from service on 16 June 2018.

By an email of 27 December 2017, she received the vacancy announcement for the post of Head of WHO Office in Senegal, at grade D.1, Regional Office for Africa (AFRO) (vacancy HWO-VN-2017-36-Senegal). The vacancy announcement, which only listed the “Language requirements” namely “excellent knowledge of French with a working knowledge of English”, invited prospective candidates to send an email expressing their interest and to include one paragraph on their motivation in applying for the position. By an email of 22 January 2018, the complainant expressed her keen interest in the position and provided her “motivation statement”.

The Selection Panel, chaired by Dr C., Director for Programme Management, AFRO, who was the complainant’s first-level supervisor at the time, met on 9 February 2018 to consider the five expressions of interest received for the position of Head of Office in Senegal. In its report dated 9 February 2018, the Selection Panel recommended the appointment of another candidate to the position of Head of Office in Senegal. The Selection Panel’s recommendation was approved by the Regional Director that same day.

Also on 9 February 2018, the complainant was informed by the Regional Director of her decision to confirm her appointment as Head of Country Office in Cameroon. On 14 February 2018, the Regional Director communicated to the Director-General the name of the proposed candidate for the position of Head of Office in Senegal and, on 16 February 2018, the Director-General notified his approval.

On 16 March 2018, the Regional Director decided to terminate the complainant’s appointment on the ground that she had refused two reassignments that had been proposed to her in the interest of the Organization pursuant to Staff Rule 1072.1. In April 2018, the complainant repeatedly enquired about the status of the recruitment process for the position of Head of Office in Senegal and, on 2 May 2018, she was informed that the process was still ongoing.

By an email of 3 July 2018, the complainant was informed that her application for the position of Head of Office in Senegal had not been successful. On 31 August 2018, she submitted a request for review of the decision not to appoint her to the latter position. In addition to requesting appointment to the subject position or, subsidiarily, a rerun of the selection procedure, moral damages, and costs, the complainant requested the production of documents and information, including: (a) All policies and procedures applicable to recruitment and appointment for the position of Head of Office in Senegal; (b) The composition of the Selection Panel for that vacancy; (c) The shortlist of candidates, redacted as necessary; (d) Minutes and/or reports of the Selection Panel, including any and all tables comparing the candidates' qualifications, redacted as necessary; (e) The recommendation of the Selection Panel, redacted as necessary; (f) Any and all correspondence concerning said vacancy and selection process; (g) The application and CV of the appointed candidate; (h) The reasons she was not selected and the reasons the successful candidate was selected instead. By a memorandum of 8 November 2018, the Director, Human Resources Department (HRD), rejected her request for review asserting that the selection process for the position of Head of Office in Senegal, was conducted properly and in a lawful manner on the basis of the pertinent WHO provisions with due consideration being given to all candidates. In an attachment to the memorandum, the Director, HRD, provided the complainant with a redacted version of the Selection Panel's report.

On 27 February 2019, the complainant filed an appeal with the Global Board of Appeal (GBA) against the 8 November 2018 decision, reiterating the requests she had put forward in her request for review. In its report of 13 December 2019, the GBA concluded that the evidence did not establish the existence of bias or conflict of interest. The GBA did not find that the assessment of the complainant's or the selected candidate's skills and experience were tainted with errors or omissions, and it could not establish a breach in the recruitment process. It thus recommended that the Director-General reject the appeal. At the same time, the GBA expressed concern with the lack of documentation and record keeping, and it made a series of recommendations with a

view to strengthening the recruitment process for Head of Country Office positions.

Meanwhile, on 21 December 2018, the complainant had filed a harassment complaint against Dr C., Director for Programme Management, AFRO, and her first-level supervisor, and against Dr M., Regional Director for Africa, alleging, inter alia, that her non-selection for the post of Head of Office in Senegal was yet another act of their harassment against her.

By a letter of 8 June 2021, the Director-General informed the complainant of his decision to accept the GBA's recommendation and thus to reject her appeal. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order that she be selected for the position of Head of Office in Senegal. Alternatively, she asks the Tribunal to order that the selection procedure for the position of Head of Office in Senegal be done anew. She claims 50,000 United States dollars in moral damages and 15,000 dollars in costs.

WHO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant initially contested the decision notifying her, by an email dated 3 July 2018, that her application to be appointed to the post of Head of Office in Senegal had been unsuccessful. As her request for review of that decision was rejected, and, in the 8 June 2021 decision, which she impugns in this complaint, the Director-General accepted the GBA's recommendation to dismiss her internal appeal, she centrally asks the Tribunal to set aside the impugned decision and to order that she "be selected for the post of [Head of Office] in Senegal" or, alternatively, that "the selection procedure for the position of [Head of Office] in Senegal [vacancy HWO-VN-2017-36-Senegal] be done anew". She also requests that WHO be ordered to pay her 50,000 United States dollars in moral damages and 15,000 dollars in costs.

2. Where, as in this case, a complainant challenges her or his non-selection to a post, the Tribunal's case law states, in consideration 5 of Judgment 4584, for example, that a staff appointment by an international organisation is a decision that lies within the discretion of its executive head. Such a decision is subject to only limited review and may be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence. Nevertheless, anyone who applies for a post to be filled by some process of selection is entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right which every applicant must enjoy, whatever her or his hope of success may be. The case law also states that an organisation must abide by the rules on selection and, when the process proves to be flawed, the Tribunal can quash any resulting appointment, albeit on the understanding that the organisation must ensure that the successful candidate is shielded from any injury which may result from the cancellation of her or his appointment, which she or he accepted in good faith. As the selection of candidates is necessarily based on merit and requires a high degree of judgment on the part of those involved in the selection process, a complainant must demonstrate that there was a serious defect in the selection process which impacted on the consideration and assessment of her or his candidature. It is not enough simply to assert that one is better qualified than the selected candidate. However, when an organization conducts a competition to fill a post, the process must comply with the relevant rules and the Tribunal's case law. The purpose of competition is to let everyone who wants a post compete for it equally. So precedent demands scrupulous compliance with the rules announced beforehand (see also Judgments 4589, consideration 4, 4467, consideration 2, and 4023, consideration 2).

3. The complainant contends that the decision not to select her to fill the contested post was flawed because it was taken in breach of the selection procedure stipulated in the applicable rules, because there

were errors of fact and omission to take into consideration relevant facts, as well as because of conflict of interest on the part of her first-level supervisor and the Regional Director, who both participated in the selection process when the complainant had informed them that their conduct towards her constituted harassment and they were involved in an informal harassment resolution process with her. She also contends that there were contradictions in the GBA report, and, additionally, the GBA incorrectly placed the burden of proof on her despite WHO's failure to properly document the selection process.

4. Before considering the merits of this complaint, two matters will be addressed. First, WHO raises receivability as a threshold issue. It submits, in effect, that any allegations the complainant presents concerning harassment against her by her then first-level supervisor and the Regional Director, and other complaints she submitted to this Tribunal and/or other bodies, such as the Internal Oversight Services (IOS), are clearly outside the scope of the present complaint, are duplicitous and irrelevant and therefore irreceivable, as they are unrelated to the contested selection decision, which underlies this complaint. The Tribunal accepts the complainant's statement that her allegations of harassment against the Regional Director and the Director for Programme Management serve the purpose of substantiating her claim that these staff members were affected by an apparent conflict of interest when acting in the context of the selection process and are therefore relevant for that purpose in the present complaint. The Tribunal accepts her further statement that she has not requested it to rule on the merits of her harassment complaint, but merely on the issue of conflict of interest in the context of the contested selection process which underlies this complaint. The Tribunal is satisfied that the complainant's allegations of harassment and related matters are intended to establish an aspect of the unlawfulness of the decision she contests in this complaint and are cast no wider. It is open to her to follow this course (see, for example, Judgment 4149, consideration 7).

5. The second matter concerns the complainant's request for an order that she "be selected for the post of [Head of Office] in Senegal". The Tribunal is not competent to make such an order. Pursuant to its case law, recalled in consideration 2 of this judgment, it is within the purview of the Director-General, and not within that of the Tribunal, to appoint her or any other staff member to a post.

6. On the merits, the complainant submits, as her first ground, that the selection process for the contested post was flawed because the Selection Panel breached Information Note 09/2009 by recommending only one candidate instead of a shortlist of two or three to the Regional Director, who was then to propose the name of one candidate to the Director-General. The complainant argues that this action by the Selection Panel deprived her of a fair opportunity for her profile to be reviewed by the Regional Director and the Director-General.

7. Information Note 09/2009, which sets out the procedure that guided the selection of Heads of WHO Country Offices at the material time, provided that all new appointees were to be selected from a Global Roster of pre-assessed candidates. It stated that when a position of Head of Country Office was open for selection, all qualified candidates in the Global Roster were to be invited to apply through the submission of an expression of interest. Applications were first to be considered at the regional level by a selection committee established by the relevant Regional Office. This selection committee was tasked to propose a shortlist of two to three candidates to the Regional Director, who would then propose the name of one candidate to the Director-General. In this regard, Information Note 09/2009 relevantly stated as follows, under the heading "Regional pre-selection":

"The Regional Office will organize a Senior Selection Committee to examine all applications. The Regional Senior Selection Committee will propose a short list of 2-3 candidates to the Regional Director. [...]"

Information Note 09/2009 then stated as follows, under the heading "[Director-General/Regional Director]'s final agreement":

“The Regional Director will propose to the Director-General the name of **one candidate**, and only proceed when there is a mutual agreement.”
(Original emphasis.)

8. These provisions are unambiguous and should be interpreted according to their clear and literal meaning. However, having noted the provision that the Regional Senior Selection Committee was to propose a shortlist of two to three candidates to the Regional Director, the GBA concluded, in error, that “the requirement of Information Note 09/2009 to propose a ‘short list of 2-3 candidates’ [to the Regional Director] should not be interpreted with such strictness that would force the selection committee to follow it to the letter only to comply with the requirement or, in the alternative, not to recommend any candidate even when there is one who has been found suitable”. This, in the Tribunal’s view, amounted to interpretation by speculation, which was taken further by the GBA’s statement, in effect, that in light of its speculation, “the language of [the provision] would benefit from clarification”. It therefore recommended to the Director-General to clarify in Information Note 09/2009 “what is the process in cases where there is an insufficient number of qualified candidates to recommend to the Regional Director”. Even more seriously, the GBA stated that the complainant did not demonstrate how the fact that only one candidate was recommended to the Regional Director, in and of itself, constituted a serious defect which impacted the recruitment process. This statement had no legal basis.

9. The GBA’s reasoning was flawed, as the Selection Committee’s recommendation of only one candidate was in breach of the provisions of Information Note 09/2009 which are reproduced in consideration 7 of this judgment and which were intended, inter alia, to safeguard the integrity and fairness of the selection process for Head of Country Offices positions. This flaw in turn tainted the impugned decision of 8 June 2021 in which the Director-General accepted the GBA’s opinion. The first ground of the complainant’s challenge to the impugned decision is therefore well founded. Accordingly, the impugned decision and, consequentially, the initial decision she was informed of in the email of 3 July 2018 will be set aside, without it

being necessary to consider her other pleas. This will be on the understanding that WHO shall shield the selected candidate from any injury that may flow from the setting aside of the impugned decision (see Judgment 3742, consideration 14).

10. In the normal course of events, this case would be remitted to WHO for the Director-General to obtain a new recommendation from the Selection Committee following a fresh selection process. However, in light of the effluxion of time, and, inasmuch as the complainant's employment with WHO ended in June 2018, it would be impracticable for the Tribunal to order that the selection process for the contested post be conducted afresh. Although the complainant does not claim material damages for the loss of a valuable opportunity to secure further employment with WHO, the unlawfulness of the contested decision, in the circumstances of this case, did cause her moral injury, for which she will be awarded compensation in the amount of 15,000 United States dollars. As she succeeds in having the impugned decision set aside, she will be awarded costs in the amount of 10,000 United States dollars.

DECISION

For the above reasons,

1. The impugned decision, dated 8 June 2021, as well as the initial decision, dated 3 July 2018, are set aside.
2. WHO shall pay the complainant 15,000 United States dollars in moral damages.
3. WHO shall pay the complainant costs in the amount of 10,000 United States dollars.
4. All other claims are dismissed.

In witness of this judgment, adopted on 24 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.