

ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



ORGANISATION DE
COOPÉRATION ET
DE DÉVELOPPEMENT
ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 17 March 2016

JUDGEMENT IN CASE No. 81

Mrs. AA
Applicant

v.

Secretary-General

Translation (the French version constitutes the authentic text).

JUDGMENT IN CASE No. 81 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on 1 February 2016
At 10 a.m. in Château de la Muette,
2 rue André-Pascal in Paris

The Administrative Tribunal consisted of :

Mrs. Louise OTIS, Chair

Mr. Luigi CONDORELLI

And Mr. Pierre-François RACINE

with Mr. Nicolas FERRE and Mr. Jean LE COCGUIC providing Registry services.

The Tribunal heard:

Mr. Giovanni PALMIERI, counsel of the Applicant;

Mr. Nicola BONUCCI, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General;

Mr. BB, witness called by the Applicant;

Mr. CC, Executive Director of the Organisation, witness called by the Secretary-General;

Mr. Jean-Pierre CUSSE, President of the Staff Association

I. THE ORIGINS OF THE DISPUTE

Ms. AA, a former official of the Organisation, which she left on 31 July 2013 on the expiry of her fixed-term appointment, requests that the decision dated 2 March 2015, by which the Secretary-General rejected her request for the Organisation to recognise that she had been a victim of personal harassment, be annulled, and that compensation be awarded for the prejudice she incurred.

1. Having been employed in the office of the Legal Adviser in the International Energy Agency between 1994 and 2001, Ms. AA was reappointed by the Organisation in 2007 as a salaried consultant in the Legal Affairs Directorate (LEG) and then as a grade A3 project staff. Her appointment was due to end on 31 December 2008.
2. In November 2008, Ms. AA applied for an open position in the XXX Service (referred to hereinafter by XXX). She was selected after a competitive procedure, and her appointment was therefore extended for six months until 30 June 2009. She was placed under the direct authority of the head of service, Ms. DD.
3. Meanwhile, the person whom Ms. AA was temporarily replacing having been permanently transferred to the Legal Affairs Directorate, a vacancy for a position was opened, and following a second competitive procedure, Ms. AA was again selected. Her fixed-term appointment was renewed until 30 September 2012.
4. In autumn 2011, messages circulated by the Staff Association reported serious difficulties in the management of the staff within XXX over the previous few years, in some cases amounting to harassment. The initial reaction of the head of service, in January 2012, was to set up working groups in this service in order to identify and attempt to resolve these difficulties. Then, in April 2012, the head of HRM asked Mr. MM, one of the Organisation's mediators, to conduct an investigation into behaviour and values within XXX. This latter interviewed Ms. AA twice, on 11 and 22 May 2012, as well as some thirty officials, many of whom expressly demanded anonymity. Several of these officials

alleged that they had been harassed. Mr. MM submitted his report to the Secretary-General in September 2012, and a slide presentation was given to the entire service on 5 September 2012. On this occasion, Ms. DD apologised to the staff of her service.

5. In the meantime, Ms. AA had been informed by Ms. DD on 17 April 2012 that, despite the excellent evaluations of her work for the years 2009, 2010 and 2011, her contract would not be renewed beyond its expiry date, 30 September 2012.
6. Despite this, Ms. AA's appointment was extended, first until 31 December 2012, and then again until 31 July 2013. An offer was made to her of temporary assignment in the YYY until that date, which she accepted. Having gone on sick leave on several occasions, Ms. AA did not commence this temporary assignment until March 2013.
7. On 26 July 2013, five days before her departure from the Organisation, Ms. AA lodged a complaint of harassment to the Executive Director, Mr. CC, against Ms. DD and asked for an investigation to be initiated pursuant to Annex XX to the Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation.
8. It was not until 29 October 2013 that the Executive Director informed Ms. AA of his decision to open an investigation and entrust it to an external investigator, Mr. NN, a former legal adviser and director of the legal services of the International Labour Office.
9. The investigation took place in November and December 2013. As had been the case during Mr. MM's assignment, several officials interviewed as witnesses sought comprehensive anonymity for fear of reprisals from Ms. DD, who was their superior. Mr. NN completed his report, containing 31 pages and 15 appendixes, on 6 January 2014, and immediately submitted it to the Executive Director. Ms. DD was given the opportunity to comment on this document. The investigator concluded that Ms. AA had been the subject of an intermittent process of harassment by Ms. DD, and in some cases of abuse of power, and that she should be awarded compensation, not just of a financial nature but above all of a moral nature, in order to restore her dignity.

10. On 1 April 2014, in response to a letter of 17 March in which she expressed her surprise at not yet having been informed of the conclusions of the report or of what action the Organisation intended to take in response, the Executive Director wrote to Ms. AA to inform her that he did not share the investigator's conclusions; in particular, he felt that Mr. NN had misunderstood the Organisation's rules and practices in respect of the decisions to conduct a second selection procedure and to offer Ms. AA a temporary assignment; that the facts cited by Mr. NN to establish the existence of an intermittent process of harassment merely demonstrated an infringement of Ms. AA's right to be treated with courtesy and respect as prescribed in Article 5 of the Regulations. He added that disciplinary proceedings had been conducted on this ground against the head of XXX.

11. In a letter of 23 May 2014 addressed to the Secretary-General, Ms. AA requested the withdrawal of the decision of 1 April 2014, the communication of the investigator's report, or at least of its findings, and compensation for the moral, physical and psychological prejudice resulting from the harassment incurred.

12. In a letter dated 21 July 2014, the Director of Legal Affairs passed on the response of the Secretary-General to Ms. AA. He firstly claimed that the Executive Director's letter of 1 April 2014 did not give notice of any decision adversely affecting Ms. AA, as it merely informed Ms. AA of the results of the investigation and the action that taken by the Organisation in response. Secondly, the Director of Legal Affairs rejected the existence of personal harassment for three reasons: that it was only after Ms. DD had informed Ms. AA on 17 April 2012 that the contract would not be extended that their relationship became difficult; that there was nothing improper about the competitive procedure of 2009; and that the same was also true of the offer accepted by Ms. AA of a temporary assignment in YYY. The Director added that the Organisation was not required to pass on the investigator's report to her, and that Ms. AA had been informed not only of the investigation's conclusions, but also of the action taken in response to it, including the instigation of disciplinary proceedings against Ms. DD. Finally, in view of the fact that Ms. AA had not been treated with due courtesy and respect, the Director apologised on

behalf of the Organisation and informed her that the Secretary-General had decided to award her the sum of 10,000 euros.

13. In a letter dated 21 August 2014, Ms. AA asked the Secretary-General to submit a request to the Joint Advisory Board (hereinafter JAB) *'to give an opinion on the legality and fairness of the decision of 1 April 2014 informing me that the Organisation does not share the conclusions of the external investigator on the materiality and classification of the facts which I reported to the Organisation in the context of my complaint of 26 July 2013'*. The letter was accompanied by a note from Mr. Palmieri, Ms. AA's counsel, in which he criticised the Secretary-General's *'disregard'* of the facts set out in the complaint of harassment which were prior to 17 April 2012 and the lack of motivation in the letter of 21 July 2014, which failed to explain in sufficient detail why the Secretary-General had decided not to follow the conclusions of the external investigator.
14. The JAB, consisting of three members appointed by the Secretary-General and three members appointed by the Staff Association and chaired by a university professor, held a hearing on 17 November 2014 during which it heard the complainant, her counsel and the Staff Association's legal adviser on the one hand, and the Secretary-General's representatives on the other, and having deliberated twice, issued its opinion on 28 January 2015.
15. Adjudicating firstly in law, the Board, taking the view that it *'had been presented not with a complaint about personal harassment, but with a complaint about the Organisation's behaviour'*, unanimously took the view *'that no right in favour of Ms. AA had been constituted and that the Secretary-General's decision to reject Ms. AA's request was sound from a legal point of view'*.
16. Then, adjudicating in equity, the Board stated its opinion that the Organisation could and should have acted differently to save Ms. AA from unnecessary mental suffering: the investigation report was not communicated to her; a second investigation could have been considered since the Organisation disputed the investigator's conclusions; the reclassification of the facts cited in support of the harassment complaint as mere lack of

courtesy should have been more rigorously argued, which was not the case in the letter of 1 April 2014; and finally, the payment of the sum of 10,000 euros announced in the Secretary-General's letter of 21 July 2014 was not made until October. The Board concluded that the compensation of 10,000 euros paid to Ms. AA was too low to make it clear that the Organisation recognised Ms. AA's moral distress, and that she should be awarded symbolic compensation of 25,000 euros to be added to the 10,000 euros already paid, in full and final settlement. It rejected the other elements of the application.

17. In a letter dated 2 March 2015, the Executive Director informed Ms. AA of the decision of the Secretary-General. Firstly, in accordance with the unanimous opinion of the JAB, the Secretary-General considered that there was no reason to reconsider his contested decision of 21 July 2014. Secondly, as regards the proposal that Ms. AA should be paid an additional sum of 25,000 euros, the Secretary-General, while noting certain inaccuracies in the opinion, informed Ms. AA that he was willing to take up this suggestion provided that Ms. AA waived any claim or action against the Organisation. Ms. AA rejected this proposal.

18. It is this decision of 2 March 2015 that is challenged before the Tribunal by Ms. AA.

II. THE PARTIES' ARGUMENTS

19. In her application filed on 15 May 2015 by her counsel, Mr. Palmieri, accompanied by 18 exhibits, Ms. AA seeks to rely both on the complaint for harassment of 26 July 2013 and on Mr. NN's investigation report of 6 January 2014. As soon as she joined XXX, she claims that she experienced relationship difficulties with Ms. DD, her immediate superior. Thus she had to submit to a second selection process although her work was entirely satisfactory. Although she was ranked first by the selection panel, relations became openly hostile from this time onwards: Ms. DD's tone was unnecessarily harsh and curt, she would burst into the office that Ms. AA shared with Mr. BB, junior legal advisor who worked with her, and she would pick on her repeatedly during meetings. During the evaluation in March 2011 of her performance in 2010, Ms. DD asked Ms. AA to choose

between her and her assistant for the award of a grading of 'above the required level'. This already difficult climate turned into specific acts of harassment: Ms. AA was treated with contempt and aggression, sidelined or even 'pushed out'. From September 2012, Ms. DD's behaviour prevented Ms. AA from carrying out her duties properly, as was established by the investigation report.

20. This 'pushing out' covers three points: the conditions under which Ms. AA was informed in April 2012 that her contract would not be converted, the limited duration of the renewal that was granted to her and that prevented her from receiving indemnity for loss of employment, and the temporary assignment in YYY, the sole purpose of which was to remove her from her service without any prospects. In these circumstances, Ms. AA experienced various health problems, as recorded by the Organisation's doctor.
21. Ms. AA had already alerted the mediator, Mr. MM, in 2011 about acts of harassment suffered by numerous officials at XXX, but the latter's report was not followed up on as it should have been. Subsequently, she made numerous attempts to get the Organisation to take corrective action: a meeting with Ms. LL, Chief of Staff of the Secretary-General, on 25 July 2012, an interview with the Director of Legal Affairs, in November 2012; a request for an appointment with the Executive Director was turned down.
22. As the temporary assignment in YYY did not offer any prospects of employment, as is clear from an email sent by the Director of YYY to Ms. AA on 19 July 2013, and was probably purely intended to remove her from XXX, the applicant then decided to lodge a complaint for personal harassment against her superior and asked for an investigation to be initiated in accordance with Annex XXV to the Regulations, Rules and Instructions Applicable to Officials. The action taken in response to this complaint is analysed in points 8 to 17 above.
23. Ms. AA firstly alleges a violation of the general principle of law requiring administrative actions to be properly motivated and accounted for; this principle is recognised in particular by the jurisprudence of the Administrative Tribunal of the International Labour Organisation (ILO) and the Appeals Board of the Council of Europe. The Secretary-

General's decision does not mention why the external investigator was mistaken about the Organisation's rules and practices, or whether such a mistake related to the materiality of the facts or the application of the Organisation's rules by the investigator. In addition, no proper reason has ever been given for the reclassification as lack of courtesy and respect of the facts cited in the complaint; this was pointed out by the JAB, which also found that if the Secretary-General was not satisfied with the quality of the investigation, he could have ordered a second investigation.

24. On the merits of the case, Ms. AA alleges a violation of her right not to suffer any form of harassment. The investigation established facts that constitute harassment: the decision to subject Ms. AA to a second recruitment procedure; numerous instances of inappropriate behaviour, confirmed by witnesses; compelling Ms. AA to choose whether she herself or her colleague would be entitled to the grading 'above the required level' for 2010; the suddenness of the announcement that her contract would not be converted – a decision with regard to which, according to the investigator, there is a strong suspicion of lack of neutrality; and the proposal of a temporary assignment with no associated job prospects. These facts constitute harassment within the meaning of Articles 6 and 9 of Annex XX.

25. None of the three reasons mentioned in the letter from the Director of Legal Affairs of 21 July 2014 rules out the foregoing conclusion: the Director could not legitimately only make use of the facts subsequent to the announcement on 17 April 2012 that the contract would not be converted, as many instances of harassment were from prior to that date; Ms. DD had no choice but to accept Ms. AA's application after the second selection, because the panel had placed her at the top of the list of candidates; the temporary assignment in YYY was designed not to offer Ms. AA a new professional opportunity, but merely to remove her from XXX.

26. Ms. AA then alleges a violation of the duties of protection and care resulting from Article 5bis of the Regulations and from international jurisprudence, particularly that of the ILO Administrative Tribunal. The Organisation had an obligation as to results and an obligation to act in good faith, yet it refrained from passing on the investigator's report

to Ms. AA at the time of the referral of the matter to the JAB and refused to inform the JAB what disciplinary action had been applied to Ms. DD.

27. Ms. AA concludes by seeking recognition that she was a victim of harassment and compensation for the prejudice suffered. Given that it took a year for Ms. AA to recover, as medically certified, the moral prejudice may be assessed at one year of the salary received by Ms. AA when she was working for the Organisation, i.e. 84,000 euros. The prejudice resulting from the loss of employment is 60,000 euros, including the severance pay of which she was deprived because she did not have six years of employment, the salary for August 2013 and compensation for an insufficient leaving allowance. Finally, she requests 10,000 euros in damages.

28. Altogether, Ms. AA asks the Tribunal:

- to annul the Secretary-General's decision of 2 March 2015 refusing to admit personal harassment and to compensate her on this count;
- to award her compensation of 154,000 euros;
- to award her a sum of 8,000 euros for procedural costs incurred.

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29. The Secretary-General submitted some comments in response on 21 September 2015, together with nine exhibits.

30. With regard to the alleged violation of the general principle of law requiring the motivation of administrative actions, the Secretary-General refers to judgment No 65 of the Tribunal, in which a similar argument was dismissed. In the present case, it is irrelevant to criticise the decision of 1 April 2014, as the contested decision is that of 2 March 2015. In any event, the letter of 1 April 2014 met the requirements of Annex XXV to the Regulations. Finally, the letter of the Secretary-General of 21 July 2014 has been substituted for that of 1 April 2014, so that the applicant's plea is irrelevant.

31. As regards the alleged infringement of the right not to suffer any form of harassment, it is helpful to specify the legal framework here, which consists of: Article 5 b) of the Regulations; paragraphs 6 and 7 of Annex XX on personal harassment, which require an element of intention on the part of the perpetrator, paragraphs 16 and 17 relating to the investigation and paragraphs 2, 11, 20, 22, 23 and 24 of Annex XXV relating to the progress of the investigation. The Secretary-General emphasises the latitude available to the Organisation regarding its action in response to a complaint of harassment: the factual basis established by the investigator was taken into account, but the Organisation was not bound by the investigator's interpretation of the facts. As this Tribunal noted in Judgment No. 65, the Organisation has a wide power of discretion as to its response to a complaint. The decision of 2 March 2015 could only be set aside if it was based on a manifest error of judgment. This was not the case, given the measures taken by the Organisation, which agreed that Ms. AA had not always been treated with courtesy and respect, initiated disciplinary proceedings against Ms. AA's superior, apologised to her and, after having paid 10,000 euros was willing to pay her another 25,000 euros.
32. The Secretary-General did not commit any manifest error of judgment. Regarding the context of the complaint, he notes that the XXX service had undergone an extensive reform, leading to tensions which caused the Head of service to set up various working groups and then to entrust a facilitation role to Mr. MM, at that time a mediator of the Organisation. Although the report submitted by the latter mentioned perceptions of harassment, it did not include any specific facts (no complaint other than that of Ms. AA having been sent to the Organisation) regarding Ms. AA.
33. After recalling the three phases of the harassment of which Ms. AA claims she was the victim (see point 19 above) the Secretary-General stresses the circumstances under which the decision was taken not to renew Ms. AA's appointment, six months before its expiry, when Ms. AA had been informed by the 2009 selection panel that her appointment was a medium-term one and that she should be sure to look for long-term positions and that the Organisation estimated that legal functions would be centralised at the Legal Affairs Directorate (LEG). Today, there is no more legal advisor in XXX. The present case is simply a reaction to the decision not to convert Ms. AA's contract, the

legality of which Ms. AA has never challenged. The Organisation is not aware of any relationship difficulties between Ms. DD and Ms. AA before 17 April 2012 – quite the contrary. It is therefore appropriate to analyse the alleged facts according to whether they are said to have occurred before or after that date.

34. Prior to 17 April 2012, two facts are alleged. First, the double competitive procedure to fill the legal advisor position at XXX in 2008 and 2009. Concerning the 2008 procedure, Ms. AA could not have been appointed by simple transfer, as she was only a project staff, and the position she was supposed to fill temporarily for six months appeared on the establishment plan, making a competitive procedure obligatory. As for the second procedure, this was justified by the fact that as this job had fallen permanently vacant, it had been decided to fill it on a longer-term basis, as this might attract more candidates than in 2008, which turned out to be the case. Moreover, it was Ms. DD who proposed the selection of Ms. AA following these two procedures.

35. The other allegation concerns the performance evaluation for 2010, during which Ms. DD indicated that she could only give the grading ‘above the required level’ to one member of the team Ms. AA formed with Mr. BB; it is claimed that she thus subjected Ms. AA to a ‘Sophie’s choice’ by asking her to choose between him and her. But besides the fact that this grading can only be attributed to a small number of officials, in the end Ms. DD did in fact award it to Ms. AA and Mr. BB, junior legal advisor, which undermines the suggestion of harassment.

36. The first of the alleged facts subsequent to 17 April 2012 was the limiting of the extension of Ms. AA’s appointment to 10 months. The latter asked that her contract be extended to the summer of 2013, and this is what was done on 21 September 2012; but on the same day, Ms. AA requested an extension of 12 months in order to receive the indemnity for loss of employment provided by the Regulations for staff leaving the Organisation without having worked there for six years. In response to the Director’s refusal, Ms. AA then indicated that she was not seeking to receive this indemnity, contrary to what she has claimed before the Tribunal. Moreover, there is no practice of

granting officials who are due to leave the Organisation an extension for the sole purpose of creating an entitlement to this indemnity.

37. A second allegation subsequent to 17 April 2012 concerns the temporary assignment at YYY. In reality, this temporary assignment was specifically and knowingly accepted by Ms. AA, to whom it was never suggested that it would lead to a permanent position at YYY.
38. Finally, certain aspects of Ms. DD's behaviour have been cited. But even considered cumulatively, the alleged actions (the removal of certain responsibilities from Ms. AA, the evaluation for 2012, requests made by email outside working hours) cannot be regarded as harassment even though it is beyond dispute that certain aspects of Ms. DD's behaviour were unfortunate and inappropriate, which led the Organisation to take disciplinary action.
39. As for the alleged breach of the duty of protection, the Organisation notes that Ms. AA did not complain of harassment until July 2013, that Mr. MM's assignment did not specifically concern her, and that the latter's recommendations have been implemented, leading to an improvement in the situation within XXX. In terms of care, the Organisation has done much: a 10-month contract extension, a temporary assignment at YYY, an apology, the award of a sum of 10,000 euros, and the initiation of disciplinary proceedings against Ms. AA's superior.
40. The nature of Ms. AA's claims for compensation show that she is in fact seeking compensation for the non-conversion of her appointment; this decision has become definitive, and Ms. AA is barred from attacking it. In any case, these requests are accessory to the main application, which is that personal harassment should be recognised; as this latter has not been established, these requests should be dismissed, especially as Ms. AA refused the 25,000 euros that were offered to her.

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41. Ms. AA submitted a reply on 21 October 2015. She denies that the essence of the dispute is the non-conversion of her contract, as is evidenced by the facts prior to 17 April 2012 mentioned in her complaint. In addition, the summary of facts presented in defence is marred by inaccuracies.
42. She maintains her assertion that the Organisation violated the general principle of law requiring the motivation of administrative acts, a principle recognised by international jurisprudence, particularly that of the Tribunal of the Council of Europe (ATCE), from which it follows that if the Secretary-General intended to depart from the conclusions of the investigation, the motivation for doing so had to be detailed and convincing; yet the Secretary-General ignored many of the facts cited by Ms. AA. The reference to Judgment No. 65 of this Tribunal is irrelevant, as in that case, the investigator had not upheld the allegation of personal harassment and the Secretary-General had followed this opinion.
43. Regarding the right not to suffer any harassment, Ms. AA stresses that the restrictive concept of harassment, which requires an element of intention on the part of the perpetrator, is undermined by French national law as well as by the law of certain international organisations such as the Council of Europe. Even though OECD law requires an element of intent for there to be harassment, the Organisation nevertheless has a duty to protect its officials. The Secretary-General has oversimplified the facts and cannot take refuge in a discretionary power that is not recognised, for example, in the case law of the ILO Tribunal. He has created an erroneous amalgam between the facts and the administrative actions, which, though not disputed, can nevertheless be analysed in terms of improper exercise of authority or abuse of power. The Secretary-General is wrong to try to shift the burden of blame onto the victim.
44. Regarding the general situation in XXX in 2011-2012, Ms. AA stresses that the definition of Mr. MM's mission is scarcely relevant and that the anonymity sought by the officials, not in relation to Mr. MM but in relation to their line managers, is easily explained by the fear of reprisals.

45. On the three phases in Ms. DD's attitude toward Ms. AA, it is incorrect to claim that for the first, there was only a single incident, namely the organisation of a second competitive procedure, and that in the second there was again only a single incident, namely the evaluation of Ms. AA and Mr. BB for 2010. As for the third phase, Ms. DD's hostile behaviour intensified after the announcement that Ms. AA's appointment would not be converted. The conditions under which this announcement was made have to be regarded as surprising given that in the evaluations of Ms. AA's work in March 2012, Ms. DD set Ms. AA goals for the entire year when the latter's appointment ended on 30 September 2012. In addition, the Secretary-General cannot use friendly correspondence from Ms. AA to Ms. DD as evidence.
46. For the period prior to 17 April 2012 and as regards the organisation of two competitive procedures to fill the legal advisor position in XXX, Ms. AA emphasises that administrative measures that comply with the rules may in certain cases be characterised by improper exercise of authority or abuse of power, as is acknowledged by bodies such as the ILO Tribunal or the NATO Appeals Commission, and that in this instance Ms. DD told her that the second procedure was optional. It is scarcely relevant that Ms. DD, who chaired the second recruitment panel, proposed that Ms. AA be reappointed. Finally it was entirely up to Ms. DD to choose which of Ms. AA or her co-worker Mr. BB merited the 'above the required level' grading.
47. For the period after 17 April 2012, Ms. AA recalls the investigator's conclusions confirming the incidents reported by Ms. AA. It is also likely that in order to take disciplinary action against Ms. DD, the Secretary-General used some of these incidents as his basis. As for the contract extension requested by Ms. AA, she had no choice but to accept what she was given, as no outplacement was offered. Above all, Ms. AA maintains that the post existed within XXX until the end of 2014. Regarding the temporary assignment at YYY, it was clear to Ms. DD that it would not lead to an appointment.
48. With regard to the duty of protection, Ms. AA points out that she made five attempts to alert the Organisation to the harassment she was receiving. In terms of the duty of care,

the Organisation cannot without contradiction both claim to have perfectly fulfilled its obligations and agree to the JAB's proposal to award Ms. AA an additional 25,000 euros.

49. Finally, Ms. AA points out that she is not seeking the annulment of the decisions in which the harassment was demonstrated, but reparation for the prejudice caused to her (in particular, she is still unable to apply for any job involving subordination); in this regard, she cites judgment No. 2861 of the ILO Tribunal of 14 May 2009.

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50. The Staff Association has submitted written comments in support of Ms. AA's request. It considers that the conclusions of an external investigator must be accepted by the Secretary-General unless there is some error of form or procedure, incompetence, manifest error of judgment, material error or improper exercise of authority. The Secretary-General's power to reject the conclusions of an investigator is not so broad as to relieve him of the need to explain precisely why he has not accepted those conclusions, in accordance with the general principle of the motivation of administrative acts. In addition, Ms. AA has not received any recognition of the suffering she endured, and it is wrong to say that she is merely seeking compensation for the decision not to convert her appointment.

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51. The Secretary-General submitted comments in rejoinder on 23 November 2015, along with two exhibits. He points out that the dispute concerns the legality of his decision of 2 March 2015, which could only be set aside on the grounds of a manifest error of judgment, and that it is up to Ms. AA to prove any harassment she has suffered. He also points out that he is not bound by the conclusions of the investigation and that he did motivate his decision to depart from those conclusions. Ms. AA cannot cite definitions of harassment other than those derived from the Regulations: an intentional element is required for harassment to be proved, as is also the case, for example, for officials of the European Communities.

52. The Secretary-General maintains that he has taken into account not only the administrative decisions concerning Ms. AA but the allegations that she made, and this is why he reached a different conclusion from that of the investigator. He affirms that the essence of the dispute is the fact that Ms. AA's appointment was not converted, and that the complaint is merely an a posteriori fabrication. He notes that several of Ms. AA's assertions are incorrect or incomplete, in particular the general situation in XXX in 2011-2012, the setting of goals for Ms. AA for 2012, and the medical situation of Ms. AA, who was only absent for a single day between 2008 and 17 April 2012. Finally, he notes that Ms. DD responded positively to many of Ms. AA's requests, and that the content of certain messages sent by Ms. AA to Ms. DD casts further doubt on the credibility of Ms. AA's claims.

III. WRITTEN WITNESS STATEMENTS

53. On 20 January 2016, the Tribunal received the witness statement of Mr. James MM, who answered the questions put to him by Ms. AA. He states that he had two contacts with Ms. AA in the course of his mediation on 11 and 22 May 2012; she informed him of the non-renewal of her contract and that Ms. DD was harassing her, verbally abusing her and hiding information from her, probably in order to get rid of her. He states that such allegations could be viewed as harassment, even though Ms. AA's focus was on the non-conversion of her contract. He explains that six other XXX officials told him that they had at times, for periods of varying length, been victims of harassment by Ms. DD. He confirms that Ms. DD admitted to him that her behaviour had sometimes been inappropriate, and apologised to the staff at the end of the presentation of 5 September 2012. The atmosphere in XXX in April 2012 left much to be desired, probably because of the structural reforms of 2011. His report was submitted to the Secretary-General on 5 September 2012, and the issues it raised were taken up by Mr. CC. The latter's deputy was transferred to XXX to become Ms. DD's deputy. Seminars were organised in XXX on ethical behaviour and the code of conduct. He did not have any contact with Ms. AA after presenting his report. As for the requests for anonymity, they were related to the fear of reprisals, especially for those who complained of harassment.

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54. On 26 January 2016, the Tribunal also received the witness statement of Ms. EE, who was social adviser to the OECD.
55. Ms. EE says she was contacted in 2010 by Ms. AA, who was suffered as a result of Ms. DD's attitude. She adds that she had been informed by other officials that Ms. AA was having difficulty with Ms. DD several months before Ms. AA requested a meeting with her.
56. Ms. EE adds that during her first contacts with Ms. AA, the latter did not mention her contract and did not indicate any concern in this regard.
57. She was informed of difficulties within XXX about six months after Ms. DD's arrival in 2008. Between 2008 and 2013, she received about 15 requests for meetings from XXX officials to discuss their relationship with Ms. DD and aspects of her behaviour: repeated, changing and unreasonable requests; shouting; derogatory comments made in offices, corridors or meetings; telephone calls at home in the evening or at the weekend on occasion; the hurling of files onto her desk. Several XXX officials informed Ms. EE that they were looking for ways to leave the Organisation in order to get away from Ms. DD.
58. In response to Ms. AA's questions, like those of other officials, Ms. EE explained what harassment is and the nature of the procedures of Annex XX to the Regulations on harassment, and indicated what other support (doctors, staff association, etc.) could be sought. Few XXX officials were willing to initiate formal proceedings since the person concerned, their hierarchical superior, was also the person who should have processed their requests.
59. Regarding Ms. AA specifically, during the first contacts, she referred to certain aspects of Ms. DD's behaviour towards her, confirmed by other XXX officials, which were causing

her significant stress. In view of Ms. AA's reluctance to start formal proceedings, she advised her to see the Acting Executive Director, Ms. LL.

60. It was at this point, in October or November 2011 (note: the witness statement mentions 2012 in error), that as a result of emails from the trade union for European civil servants, the difficulties in XXX became public; this led to Mr. J. MM's assignment.

61. With regard to the way this assignment was conducted, Ms. EE comments that it was presented as being supposed to handle claims of possible harassment by Ms. DD, but the procedure laid down for such circumstances in Annex XX to the Regulations was not followed. It was DD that initiated the response to the claims of her department, despite the fact that the accusations related to her. Moreover, the definition of harassment used by Mr. MM was not that of the Regulations. Despite this, Mr. MM concluded that seven of the cases constituted harassment.

62. On 5 September 2012, following the presentation by Mr. MM of his findings to the entire staff of XXX, Ms. DD did not challenge Mr. MM's characterisation of certain aspects of her behaviour as harassment.

63. There was no sign from Ms. DD's superiors that any action would be taken following Mr. MM's assignment.

64. In the meantime, Ms. AA informed Ms. EE that her contract would not be renewed. Ms. EE encouraged her to request a meeting with the new Executive Director, which was not granted, and then with the Director of Legal Affairs, whom she was able to meet. It was at this point that, having exhausted informal channels, Ms. AA filed a complaint and an outside investigator was appointed, who concluded that Ms. AA had been harassed by Ms. DD.

65. In light of her experience with regard to harassment, Ms. EE believes that the behaviour to which Ms. AA was subjected corresponds to the definition of harassment in Annex XX to the Regulations (sections 1, 2, 3, 6 and 9) and that it is very likely that Ms. DD's

behaviour was harassment. Regarding Ms. AA specifically, Ms. EE states that, although she was unable to hear Ms. DD's viewpoint or discover why Ms. AA's contract was not extended, Ms. AA had complained to her directly of harassment well before this issue came up.

66. Finally, Ms. EE believes that Ms. AA's sick leave can be related to her sense of being harassed in the workplace.

IV. THE HEARING OF 1 FEBRUARY 2016

67. During the hearing, held *in camera*, the Tribunal heard the parties and two witnesses, collected the comments of the parties on the written evidence and heard the staff representatives.

68. Pleading for Ms. AA, Mr. Palmieri, after recalling the sequence of incidents, dealt with six points: the difference between facts in the case and administrative actions; the logical nature of the investigator's approach; the evidence of harassment provided by witness statements, the recordings of which the Tribunal was able to hear; the misunderstanding by the Secretary-General of the investigator's conclusions; the change in the position of the Secretary-General, who now claims that the only issue is the non-conversion of Ms. AA's appointment; and the intentional nature of the harassment, as Ms. DD was not unable to understand the significance of her actions. Mr. Palmieri then took up the written arguments on the lack of motivation of the Secretary-General's decision and of the Organisation's failure to protect Ms. AA, which was referred to by the JAB when it mentioned the non-exemplary fashion in which Ms. AA's complaint had been handled. Finally, he referred to judgment No 3071 of the ILO Administrative Tribunal of 8 February 2012 to justify the classification of harassment and claims for damages.

69. Mr. Bonucci, Director of Legal Affairs, representing the Secretary-General, expressed his wish to put some questions to the witness that Ms. AA wished to produce, then to produce his own witness and finally to present his own comments. The Tribunal consented.

70. The hearing then took place of Mr. BB, who was appointed by the Organisation as a consultant in January 2008. On Ms. DD's proposal, he had a fixed-term appointment in XXX to work until October 2011 under the supervision of Ms. AA, whose office he shared for three years. In late 2011, he joined the RPS service, remaining there until February 2012; he then worked in the IEA until the end of 2012.

Regarding relations between Ms. DD and Ms. AA, he characterised them as tense and fluctuating. Ms. DD's behaviour towards her tended to change rapidly. He himself always had good relations with Ms. DD, however.

71. Asked whether there was any inappropriate behaviour by Ms. DD towards Ms. AA, he specified that there were several such forms of behaviour: Ms. DD used to stare at Ms. AA in the corridors and at departmental meetings, and employed a very curt or downright rude tone. She introduced Ms. AA in a very coarse manner to the Secretary-General. At a breakfast organised to celebrate the witness's birthday, Ms. DD told Ms. AA to find her 'somebody to f*** me if you want me to be nice to you'. At a meeting with the Staff Association, Ms. DD told Ms. AA that she was dressed like an air hostess. Ms. DD always spoke roughly to Ms. AA, and this created an unpleasant atmosphere. Mr. BB claimed that Ms. AA was not responsible for Ms. DD's behaviour. Asked whether Ms. DD refrained from communicating important information to Ms. AA, Mr. BB replied that this happened several times: Ms. DD addressed him directly rather than Ms. AA. In terms of the relationship between these two people at the time when the new selection process was launched for the position held by Ms. AA, Mr. BB, knowing that Ms. AA's original appointment was for six months, indicated that he was surprised by the announcement of this new procedure.

72. When Mr. Bonucci asked whether he was aware of the nature of the position held by Ms. AA before joining XXX and if so, why he was surprised, Mr. BB replied that it would have made more sense to open a position on the establishment plan immediately.

73. In response to questions asked by members of the Tribunal, Mr. BB replied that there was inappropriate behaviour by Ms. DD right from the early days of Ms. AA's presence;

that the curtness or roughness of Ms. DD's comments was particularly evident in her habit of putting questions to Ms. AA in order to catch her out; that Ms. AA reacted with stoicism to such behaviour, but displayed stress and anxiety when she was with the witness.

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74. The hearing then took place of Mr. CC, who was in 2013, the Executive Director of the Organisation . Regarding his role, he recalled that he decided that an investigation should be held, that he set the terms of reference and appointed the investigator. The investigator was not appointed until the end of October because the complaint was filed during the summer holidays, and two people who were asked to conduct the investigation refused. He rejected the conclusions of the investigator because he linked the facts which were cited to the chronology, i.e. the non-conversion of Ms. AA's appointment, and he took the positive evaluations of Ms. AA into account. He thus took the view that this was a case of inappropriate conduct. After the submission of Mr. MM's report, the situation improved, although it remained delicate. Ms. DD was very isolated, so he transferred his deputy to XXX to act as Ms. DD's assistant. Finally, he informed the Tribunal that the disciplinary action taken against Ms. DD was a reprimand.

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75. In his comments, Mr. Bonucci first stated that the 25,000 euros had been offered by the Organisation in full and final settlement, and that the Organisation had acknowledged Ms. AA's distress, as it had apologised to her in writing. He pointed out that the subject of the dispute is the legality of the decision of 2 March 2015 taken by the Secretary-General after consulting the JAB following Ms. AA's complaint. The JAB, composed jointly of management and staff representatives, held an oral hearing in November 2014 and deliberated twice before issuing a unanimous opinion, which the Secretary-General followed. The Tribunal would not be able to annul the decision of 2 March 2015 unless it displayed a clear error of judgment.

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76. Following Mr. Palmieri's response to Mr. Bonucci's comments and a comment from Ms. AA, Mr. Jean-Pierre Cusse submitted comments on behalf of the Staff Association. He

stated that Ms. AA could not easily have complained when she was fighting to obtain the conversion or extension of her appointment. The investigator's findings had legal force and were binding unless they were based on material or manifest errors of judgment.

V. THE TRIBUNAL'S APPRAISAL

A. Applicable law

77. In the terms of Annex XX (PREVENTING AND DEALING WITH HARASSMENT AT THE OECD POLICY AND GUIDELINES) to the Organisation's Staff Regulations:

'1. All OECD staff members have the right to be treated with dignity and respect and to work in an environment which fosters professional respect and courtesy. Harassment of any kind at work, or in connection with work performed on behalf of the Organisation, will not be tolerated and may give rise to disciplinary action.

2. All staff, regardless of their grade and contract status, share the responsibility for preventing harassment and maintaining a harmonious working environment. This implies that, in accordance with the standards of conduct expected in the relevant provisions of the Organisation's staff rules, they shall treat each other with respect and due regard for individual dignity so as to ensure that the workplace is free of intimidation, hostility or offensive behaviour and, in particular, of any form of harassment. In an international environment like the OECD we must all be aware of the fact that our own cultural norms and values may not be shared by colleagues and be sensitive to misunderstandings or differences of opinion based on those differences of culture. But these differences cannot be used as an excuse for harassing behaviour.

3. Managers at all levels have a key role and bear special responsibility for preventing the occurrence of any form of harassment. They should foster a positive working environment and, in their leadership, display a willingness and ability to deal effectively with harassment when it does occur, in particular by being responsive to and supportive of any staff member who complains about such conduct. They must set a good personal example and ensure that

the Organisation's policy and guidelines on harassment are communicated to and understood by all their staff, and that they are applied in the workplace.

4. Any retaliation or threat of retaliation against individuals making formal or informal complaints of harassment, or participating in the investigation of such complaints (for example, as witnesses), will be considered a violation of acceptable standards of conduct and will result in disciplinary action. At the same time, any accusation or complaint shown to be made in bad faith will also be considered a violation of acceptable standards of conduct and will be treated in the same manner.

5. This policy will regularly be reviewed in order to ensure its effectiveness.

Personal harassment

6. Personal harassment is any repeated behaviour or pattern of behaviour that is reasonably regarded as aimed at creating a hostile work environment. It may be perpetrated by an individual or by a group. It includes behaviour which, in violation of the right to dignity at work, demeans, belittles or causes humiliation or embarrassment to an individual, or unfairly compromises the individual's career prospects.

While an isolated incident of such behaviour may infringe the right to dignity at work, personal harassment takes the form of an accumulation of incidents, even when each incident, taken in isolation and out of context, could be seen as trivial.

7. Even though there may be "grey" situations, personal harassment should be distinguished from other types of behaviour that may be detrimental to another individual's working conditions, but that are manifestly unintentional, or are attributable solely to poor management skills. For example, the behaviour of a manager or colleagues who fail to keep staff informed of important business developments as a result of poor organisation would not, prima facie, be considered personal harassment. On the other hand, the behaviour of a manager or colleagues who sabotage an individual employee's work by deliberately withholding information that is required to fulfil a task, and who do so repeatedly, would, prima facie, present the characteristics of personal harassment.

Harassment and abuse of power

9. When harassment is engaged in by an official or group who is in a position to influence the career or employment conditions of the victim (including through recruitment, assignment, contract renewal, performance evaluation or promotion), it constitutes an abuse of a position of power which in itself will be regarded as serious misconduct.

Investigation

16. The Head of Human Resource Management will examine the information that is submitted and if appropriate will initiate an investigation under the conditions set out in the Decision of the Secretary-General concerning the investigation procedure within the Organisation (Annex XXV to the Staff Regulations applicable to officials of the Organisation.

17. In the light of this information and, if applicable, of the conclusions of the investigation, the Head of Human Resource Management will take appropriate measures, ranging from closing the case with no further action to initiating disciplinary measures, as provided for in Regulation 21 of the Staff Regulations and the Instructions relating thereto.'

B. The classification of Ms. AA's action

78. Before going any further, it is necessary to determine whether the action brought by Ms. AA was intended to obtain recognition of personal harassment, or purely, as alleged by the Secretary-General, compensation for the prejudice she suffered as a result of the non-renewal of her appointment.

79. The Tribunal notes several points here: first of all, the terms of Ms. AA's complaint mentioned in point 7. It is entitled: 'Complaint against my supervisor of personal harassment and request for an investigation pursuant to Annex XX to the Regulations, Rules and Instructions Applicable to Officials of the Organisation'. After explaining the context and in particular the timing of the complaint, Ms. AA describes precisely the facts which she claims constitute harassment. She justifies her request to initiate an investigation in terms of the Organisation's failure to respond when the facts of harassment had been established by the internal mediator, Mr. MM. She concludes her

complaint as follows: 'It is in the hope of obtaining recognition of and putting to an end such disrespectful and aggressive behaviour in a [...] department, which ought to be exemplary in its mode of operation and personnel management, that I file this complaint.'

80. Secondly, paragraph 2 of the investigator's report: 'The objective of the investigation is to establish the materiality of the facts alleged in the complaint filed on 26 July 2013 by Ms. AA... of personal harassment'.

81. Thirdly, the terms of the letter sent on 23 May 2014 by Ms. AA to the director, in which she disputes the latter's decision not to accept the investigator's conclusions that Ms. AA had been the victim of an intermittent process of harassment. Ms. AA states that 'It is hardly necessary to recall that the investigator's conclusions consist firstly of a confirmation of the materiality of the facts and secondly of the clear classification of those facts as personal harassment.' In the conclusion of her letter, Ms. AA requests:

- 'the re-examination of the legality of the entire procedure concerning me following the filing of my complaint;
- the withdrawal or modification of the decision of Executive Director of 1 April 2014;
- the communication of the external investigator's report, at least in the form of extracts from its contents and in any case the entirety of its conclusions;
- compensation for the personal, physical and psychological prejudice I suffered because of the harassment I experienced.'

82. Fourthly, the terms of the note attached to the letter of 21 August 2014 by Ms. AA to the Secretary-General requesting referral of the matter to the JAB. Ms. AA's counsel notes that 'there is no valid reason to ignore, as the Secretary-General seeks to do, all the facts stated in the complaint of harassment that pre-date 17 April 2012'. Regarding the 10,000 euros awarded in compensation by the Secretary-General, it is stated that 'this amount was decided on a false basis given that she was a victim of personal harassment, as acknowledged by the external investigator'. The text of the complaint was attached to this letter of Ms. AA.

83. In view of these perfectly consistent pieces of evidence illustrating Ms. AA's constant desire to obtain recognition of personal harassment and compensation for the prejudice resulting from it, the Tribunal cannot understand how the JAB could have believed that it had not had a complaint of harassment referred to it, and commit such a gross and flagrant misunderstanding regarding the subject of the opinion it was asked to provide.
84. It follows from this, firstly, that the opinion of the JAB, to the extent that it was made in law, is null and void, and certainly does not 'confirm', as is claimed in the Secretary-General's letter of 2 March 2015, his previous decision of 21 July 2014 not to recognise personal harassment.
85. It follows, secondly, that the Secretary-General cannot, without distorting the facts recalled above, maintain (point 33 of his comments of 21 September 2015) that 'the complaint for personal harassment is a demonstration of spite and a desire for revenge on the part of the applicant on Ms. DD, due to the non-conversion of her fixed-term appointment into an open-ended appointment', or again that (point 141 of the same comments) 'the nature of the applicant's claims for compensation further underline that the applicant is actually seeking – through this procedure – to obtain reparation for what appears to be the real issue in this case: the decision not to convert her appointment into an open-ended appointment'.
86. But above all, and thirdly, the decision of 2 March 2015 is vitiated by a lack of motivation: by referring to the JAB's opinion as though its opinion were a legal judgment, the Secretary-General believed that he was dispensed from any requirement to respond on the question of personal harassment, thus committing the same manifest error of judgment as the JAB. The mere mention of the decisions of 1 April 2014 and the Secretary-General's decision of 21 July 2014 that replaces it cannot take the place of the precise and detailed motivation required for a decision to refuse to accept a complaint of harassment that had been recognised by an external investigator. Nor do the Secretary-General's remarks concerning the inaccuracies in the JAB's opinion or the offer of 25,000 euros of compensation in full and final settlement constitute such motivation either.

87. On this basis alone, the decision of the Secretary-General of 2 March 2015 must be annulled (see on this point the ILO Administrative Tribunal, 8 February 2012, No. 3071, § 40).

C. Harassment: the relevant facts

88. As a preliminary point, the Tribunal considers it possible and necessary to examine, from among the allegations made by Ms. AA, the decision to organise a new competitive procedure in 2009 as well as the decision of 17 April 2012 not to convert Ms. AA's appointment, not in order to ascertain their legality, which is no longer open to dispute, but to check whether, in the context in which they occurred, one or more motives unrelated to the interests of the Organisation contributed to these decisions; and, if so, whether these motives can contribute to the recognition of personal harassment.

89. The Tribunal singles out the following facts as tending, taken in isolation, to be indicative of personal harassment:

90. The facts related by Mr. BB in his witness statement at the hearing and recounted in points 67 to 70 above. Firstly, these facts are not disputed; secondly, they all occurred between 2008 and 2011, i.e. well before the announcement of the non-conversion of Ms. AA's appointment;

91. The undisputed facts related by the external investigator in point 83 of his report, which is worth quoting here: *'Witnesses A, B, D and E directly witnessed inappropriate behaviour reported by Ms. AA in her complaint: her sudden and sometimes rude removal from certain technical responsibilities (stress at work, dispute resolution), disparaging comments during meetings with the Staff Association, bursting into Ms. AA's office, the throwing of documents onto Ms. AA's desk together with disparaging comments.'* These accounts are entirely consistent with that of Mr. BB;

92. It is worth examining in detail whether evidence of harassment is provided by the organisation in 2008 of a competitive procedure to temporarily fill the legal adviser

position in XXX – instead of a simple transfer from one department to another – and then in 2009 of a new competitive selection procedure in order to fill the position, with a three-year appointment, exercised by Ms. AA in XXX since November 2008 on a temporary basis for six months. Regarding Ms. AA's recruitment XXX in November 2008, it is appropriate to refer to a letter sent to Ms. AA on 4 July 2007 by the acting Head of Human Resources. It is stated in the letter that: *'I am pleased to offer you an appointment to the OECD as Legal Advisor in a project position, in the Legal Directorate of the Secretariat General ... Please note that, given the nature of the position, your appointment cannot be converted into an open-ended appointment and that you can only be transferred to positions on the establishment plan to the extent that you have undergone all appointment and recruitment procedures applicable to officials appointed to this position...'* Ms. AA formally and unreservedly accepted this offer on 9 July 2007. The temporarily vacant position within XXX was a position on the establishment plan, and given her status as a project official, Ms. AA had thus been clearly informed that she could not claim such a position by simply transferring to another department;

93. Regarding the decision to organise a new competitive selection in 2009, it is true that a three-year appointment is likely to attract more and better candidates than a six-month appointment; on the other hand, one cannot but wonder at the decision to use such a cumbersome procedure as a competition involving 121 candidates, when, firstly, *'there was nothing to prevent the Organisation from appointing the applicant directly to this position without any competitive procedure'* (point 98 of the Secretary-General's comments in response), secondly, Ms. AA's services since November 2008 had given complete satisfaction, as evidenced in the report of 15 July 2009 of the second selection panel: *'Due to her in-house knowledge and direct experience of the job itself, Ms. AA is already highly operational in her role. In addition, she is well integrated into the current team, is at ease with the associated supervisory role and is appreciated by her HR colleagues. On a more general level, she is dynamic, energetic and motivated. It should also be noted that Ms. AA came first in the written test by a non-negligible margin'*, and finally, the position was not permanent, as is clear from the non-conversion of Ms. AA's appointment;

94. Given that Ms. AA had been exposed from the time of her recruitment to Ms. DD's attitudes which amounted to harassment, the Tribunal considers that the decision to organise a new competitive procedure was to a very large extent intended to '*unfairly compromise*' her career prospects within the meaning of Article 6 of Annex XX; while it is true that the panel, which was chaired by Ms. DD, found unanimously in favour of Ms. AA and that Ms. DD, as Head of service indeed followed the panel's recommendation, these circumstances are not such as to dispel all doubt about the true motives for a new competitive selection which was neither required by the Organisation's rules nor justified by any inadequate performance on the part of Ms. AA;

95. The fact, also noted by the investigator, that during the performance evaluation process for 2010 Ms. DD presented Ms. AA with a choice that it was not up to her (rather than the head of service) to make, namely which of her or Mr. BB would be entitled to the highest grading. The fact that ultimately both officials were awarded this grading by Ms. DD does not diminish the fundamental impropriety of her initial request;

96. The fact that Ms. DD, during the evaluation on 6 March 2012 of Ms. AA's performance for 2011, not only reminded her that her appointment would come to an end in September 2012, but above all believed that she could set her targets for the whole of 2012, when it had always been clear to her that Ms. AA's appointment would end on 30 September. On this subject, the investigation report (point 99) states that '*... given the difficulties of evaluating Ms. AA's result, she had preferred not to inform her of her intention on this occasion*';

97. As regards the non-conversion of the contract announced on 17 April 2012, the Tribunal notes that Ms. AA's appointment, as extended in 2009, was always a fixed-term appointment for a period of three years, and that an official in this situation is not entitled to an extension or conversion. It also notes that on 18 August 2009, Mr. GG sent Ms. AA a message from the head of human resource management in which he confirms '*your appointment following your previous appointment to the position indicated above, at your current grade and step, with effect from 1 October 2009 to 30 September 2012*

inclusive ... I draw your attention in particular to the provisions of Article 9 and Instruction 109/1 relating thereto. The renewal of your appointment does not imply that it will be renewed again, or that it will be transformed into any other kind of appointment.' Ms. AA replied two minutes later to this email as follows: *'I accept, with pleasure!'* (exhibit 12 attached to the complaint itself; exhibit 1 of the application). Therefore she was properly informed of the temporary nature of her three-year appointment, and it is irrelevant to examine whether the report of the second panel of 15 July 2009, which states: *'As the career perspective for this position is seen as mid-term, Ms. AA will need to keep in mind other possible future development opportunities on the longer-term basis'*, was brought to the attention of Ms. AA.

98. The question, therefore, is whether reasons unrelated to the interests of the department or the Organisation contributed to this decision, when, in view of her service record, Ms. AA could legitimately hope that her contract might be converted. The reason stated by Ms. DD in an email sent on 10 May 2012 in response to an email from Ms. AA of 20 April 2012 asking Ms. DD to support her request for contract conversion, is as follows: *'..In fact, the functions [...] are not part of XXX's core activities. In addition, the current organisational structure [...] seems to me to be likely to evolve with a view to improving operational effectiveness'*.

99. In these circumstances, it is necessary to ascertain whether, after Ms. AA left her position in XXX, i.e. in December 2012, a legal position was maintained in XXX. The Secretary-General claims that the centralisation of the legal advice with the Legal Directorate (LEG) *'is now effective and that XXX has no further legal position'* (point 79 of his defence comments dated 21 September 2015). For her part, Ms. AA claims (in point 84 of her reply) that the function as legal officer *'continued to be exercised until at least the end of 2014'*. This point is not disputed by the Secretary-General in his rejoinder.

100. It is clear from the evidence that legal functions had not disappeared by February 2013, firstly in view of a recruitment that was undertaken to replace Mr. BB in late 2011, and secondly because a note sent on 7 February 2013 to the entire XXX service about the

creation of a position of deputy head of department states: *'4) Role of Deputy Head ... : supervise work of legal team'*, confirming an email of 5 February from Ms. DD to Ms. AA. However, the investigation report (point 104) issued in January 2014, i.e. by the time Ms. AA had left XXX, simply mentions the presence of one junior legal officer, described by one of witnesses as a simple *'point of contact'*. In these circumstances, Ms. DD's decision of 17 April 2012 cannot in itself be regarded as dictated by the desire to harm Ms. AA's career prospects.

101. The Tribunal also singles out two incidents whose materiality is not contested: one on 26 June 2012, when Ms. DD entered the office that Ms. AA shared with Ms. HH (who had replaced Mr. BB) shouting; the second, on an unspecified date, but according to Ms. AA after 26 June, during a weekly meeting she had with Ms. DD; the latter was in such a state of anger on this occasion, that her own assistant Ms. II entered Ms. DD's office in order to physically protect Ms. AA.

102. The proposal of a temporary assignment in YYY was made to Ms. AA to enable her to extend her search for employment in the Organization beyond her own department. In a letter dated 12 December 2012, the Secretary-General wrote: *'...I am pleased to inform you that following some enquiries by the Head of Human Resource Management, a temporary assignment has been identified that is likely to boost your chances of finding a new job...'*. Given the state of health of Ms. AA, who went on sick leave in December 2012 and again in January and February 2013, this internship could not begin until 19 March 2013. But it is clear from a letter dated 18 June 2013 from Ms. JJ, an YYY official, to Ms. KK of XXX (exhibit 13 of the investigation report) that this service had been informed by Ms. JJ on 15 March 2013 that YYY had neither the intention nor the means to extend the presence of Ms. AA beyond the initial temporary assignment, and that this needed to be made clear before the start of the temporary assignment. Ms. JJ states that this was not done in time. It was not until the end of her temporary assignment that Ms. AA was informed that it had been known from the beginning of this temporary assignment that it could not lead to anything else.

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103. At this stage, it is necessary to establish whether the facts listed above, except for the decision not to convert Ms. AA's appointment, may be regarded as constituting an intermittent process of harassment, as the external investigator believed. The Tribunal recalls that, under the terms of Article 6 of Annex XX to the Regulations, *'personal harassment is any repeated behaviour or pattern of behaviour that is reasonably regarded as aimed at creating a hostile work environment... It includes behaviour which, in violation of the right to dignity at work, demeans, belittles or causes humiliation or embarrassment to an individual, or unfairly compromises the individual's career prospects. While an isolated incident of such behaviour may infringe the right to dignity at work, personal harassment takes the form of an accumulation of incidents, even when each incident, taken in isolation and out of context, could be seen as trivial.'*

104. First, the record clearly shows an accumulation of incidents that began at the end of 2008, when Ms. AA was assigned to XXX (whereas no incident of any kind was recorded during Ms. AA's presence from July 2007 to November 2008), and did not stop until the day in December 2012 when Ms. AA, initially because of sick leave, and subsequently because of her temporary assignment in YYY, was permanently relocated away from XXX and her superior.

105. Second, these actions, which tended to violate Ms. AA's right to dignity at work, had the effect of demeaning, belittling and causing humiliation to Ms. AA and compromising her career prospects – and also, incidentally, her health.

106. On the question whether Ms. DD's behaviour was intended to produce such effects, as required by Article 6 of Annex XX, the Tribunal responds in the affirmative. By way of example, the intentional nature of her behaviour is particularly evident in actions such as removing Ms. AA from working on certain areas that fell within her job description, organising a second competitive procedure, the choice with which Ms. AA was initially presented between herself or Mr. BB for the award of the 'above the required level' grading for 2010, Ms. DD's deliberate failure during the 2011 evaluation to inform Ms.

AA that her appointment would not be renewed, or Ms. DD's silence about the total lack of job prospects in YYY.

107. The Tribunal also notes that the JAB's opinion, to the extent that it was issued in equity, is literally peppered with references that would be far more relevant to a case of harassment than to the simple mishandling of the complaint by the Organisation that the JAB concluded had occurred, or than to the mere breach of the rules of courtesy that the Organisation is prepared to recognise: '*... profound frustration and a conviction of having been unfairly treated...*'; '*... unnecessary mental suffering...*'; '*... psychological damage...*'; '*...the moral distress of Ms. AA, who remains profoundly hurt after years of good service.*'

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108. Finally, the Tribunal, in support of its findings, notes the general context that was experienced by XXX under the leadership of Ms. DD between 2008 and 2013 and that is specifically described in the report of Mr. MM in 2012, in that of the external investigator in 2014 and in the witness statement of Ms. EE: the raising of public questions about human resource management in XXX in emails from the trade unions, multiple allegations of harassment corroborated by witness statements, and insistent requests by the officials interviewed by both Mr. MM and Mr. NN of absolute anonymity for their testimony, for fear of reprisals by Ms. DD. The situation in XXX must have seriously deteriorated for the Organisation to issue a reprimand of an official with the high-ranking grade of Head of service.

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109. For all these reasons, the Tribunal finds, like the external investigator, that Ms. AA was the victim between 2008 and 2013 of an intermittent process of harassment by Ms. DD. Her claim for compensation is therefore well-founded.

110. The Tribunal cannot accept the indemnity claim for loss of employment inasmuch as Ms. AA had no right either to the conversion of her appointment to an open-ended

contract, or the extension of her appointment by 12 months instead of 11 to enable her to receive indemnity for loss of employment.

111. On the other hand, it is appropriate to provide general reparation for the damage and moral prejudice suffered by Ms. AA, both during her presence within the Organisation and in the months that followed her departure, by the award of the sum of 70,000 euros, including the 10,000 euros paid to her by the Organisation in 2014.

112. Finally, she is granted the sum of 8,000 euros for reimbursement of procedural costs.

For these reasons, the Tribunal:

- 1) Annuls the decision dated 2 March 2015 of the Secretary-General of the Organisation.
- 2) Rules that the Organisation shall pay Ms. AA in reparation of damages and moral prejudice a total sum of 70,000 euros, less the sum of 10,000 euros already paid.
- 3) Rules that the Organisation shall pay Ms. AA the sum of 8,000 euros in reimbursement of her legal costs.
- 4) Rejects the remainder of Ms. AA's request.