

FICSA LEGAL ADVISOR
TIPS AND INFORMATION NEWSLETTER

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**The ILOAT Awards 200,000 USD to
Probationer/Whistleblower For Harassment**

The ILOAT recently gave significant life to the principle that international organizations must provide a harassment-free workplace by awarding an FAO probationer 200,000 USD in damages for proven harassment. This is a significant victory for victims of harassment, and a wake-up call for administrations of international organizations who often rely on the fact that the ILOAT historically has only made modest damages awards in cases of proven harassment. About 10 years ago, I represented a staff member at the CTBTO who was subject to similar harassment and the Tribunal awarded 35,000 euros, which was considered significantly high at that time. In researching the issue at that time, it appeared in fact that the Tribunal was awarding more damages for failure to investigate harassment allegations than for cases of proven harassment. This judgment gives renewed impetus for international organizations to revisit their policies and procedures for resolving harassment related grievances, and to ensure enforcement.

In Judgment No. 3593, the P-5 official was appointed by FAO as the Chief Technical Advisor for a 5 year project in Saudi Arabia. The appointment was for one year during which the staff member was on probation. Some 3 months before the expiry of the appointment the probationer was advised that his appointment would not be extended because of “weak performance and spelling mistakes in his progress reports.” The probationer then reported corruption to the Inspector General’s Office (OIG) in the management of the project, including diverting project funds, and by the officials who recommended his non-extension. A few months later he filed a harassment grievance pursuant to FAO’s rules, further alleging that his non-extension was in retaliation for not agreeing to participate in the office’s corrupt practices. The allegations were referred to an investigation panel which, following several witness interviews, issued a written report containing factual findings. The FAO concluded based on the report that no harassment had occurred.

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The former staff member appealed to the Appeals Committee requesting reinstatement and moral damages for harassment and retaliation. The Appeals Committee recommended that the allegations of retaliation be investigated by the OIG and that action be taken (presumably) to ensure that staff have access to satellite phones upon request; otherwise, it agreed with the investigation panel that the staff member had not suffered harassment and otherwise dismissed the appeal.

An appeal was timely lodged with the Tribunal.

With respect to the non-extension of the probationary appointment, the Tribunal found that no proper supervision had been conducted during the probationary period, and no performance evaluation completed as required by the rules. In addition, the Tribunal found that a Ministry official had unduly influenced the non-extension decision, and that the procedures for considering whether to extend the appointment and for providing notice and opportunity to reply were not followed.

With respect to the harassment, the Tribunal agreed with the Panel that the probationer failed to follow procedures and that the Ministry was not satisfied with the probationer's performance on the project. But the probationer's misbehaviour did not justify harassment.

First, the Tribunal found as it often does that the allegations were not addressed and/or investigated promptly when they were first raised as required by the harassment policy. Second, the Tribunal found that the Panel erred when it decided, contrary to the harassment policy and Tribunal cases, that harassment requires intentional harm or malice – one may harass and never harbour an ill thought; indeed the harasser may consider his/her actions innocent or even positive in the working environment. Third, the Tribunal disagreed with the conclusions that the following actions did not amount to harassment as defined and explained in FAO's harassment policy:

- i) publicly teasing the probationer who complained about a snake bite;
- ii) publicly chastising and denigrating the probationer's technical ability;
- iii) accusing the probationer of dishonesty and lack of transparency in an email distributed to project members;
- iv) failure to protect from Ministry officials who directed certain actions taken by FAO officials (FAO's harassment policy expressly requires project leaders to protect field officers from improper behaviour by local officials);
- v) failure to provide a satellite phone since no one else had requested one;

vi) failure to evaluate the probationer's appointment.

The Tribunal was particularly cognizant that the FAO harassment policy acknowledged that the risk of harassment was potentially higher in field offices. The Tribunal awarded damages for the probationer's lost opportunity to have his appointment extended, and for harassment in the global sum of 200,000 USD.

It is encouraging that the Tribunal, which normally gives significant weight to the findings and opinions of internal investigation panels and appeals boards, disagreed entirely with those bodies, and that the complainant had the courage to pursue his grievance despite the obstacles raised by FAO. This case also shows that even where the victim's behaviour is not entirely perfect, he/she is still entitled to due process, respect, mutual trust, and a working environment free from harassment.