



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1029

Case No. 1054: BANGOURA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Mr. Spyridon Flogaitis;

Ms. Brigitte Stern;

Whereas at the request of Cheickh M. Tidyane Bangoura, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 28 February 1999 the time-limit for the filing of an application with the Tribunal;

Whereas, on 28 February 1999, the applicant filed an Application containing pleas which read as follows:

"(a) ...

...

(ii) ... to hear the following witnesses ...

(b) ...

(i) Order the Respondent to rescind his decision of 9 January 1997 concerning placing the Applicant on leave with immediate effect (...);

- (ii) Order the Respondent to rescind the UNDCP decision of 26 June 1996 not to extend the Applicant's temporary contract, since the decision in question violates a procedural rule, is based on an error of fact and of law, fails to take account of essential facts, is vitiated by abuse of power and draws clearly erroneous conclusions from the relevant documents (...);
- (iii) Order the Respondent to rescind the decision not to pay the Applicant his January 1997 salary, not to pay him in lieu of accrued leave and not to pay him any other type of emolument due prior to his separation from service on 31 January 1997 (...);
- (c) ...
- (i) Order the Respondent to withdraw publicly the defamatory statements made about the Applicant and to make an appropriate apology to him (...);
- (ii) Order the Respondent to rehabilitate the Applicant entirely by:
 - Reinstating the Applicant administratively as a United Nations staff member;
 - Giving the Applicant's case 'equitable consideration' for the purpose of a career appointment ...
- (iii) Order the Respondent to compensate the Applicant for the enormous injury he has sustained and for the damage to his United Nations career and his employment prospects, particularly damage resulting from his continuing unemployability owing to the defamatory statements made about him by the Spokesman for the Secretary-General on 9 January 1997 (...);
- (iv) Order the Respondent to make an appropriate apology to the Applicant for the unlawfully instituted investigation of him on the basis of a sexual harassment complaint (...);
- (v) Order the Respondent to compensate the Applicant for the enormous injury he has sustained and for the damage to his person and to his personal and professional reputation, both at the United Nations and elsewhere, as a result of the unlawfully instituted investigation of him on the basis of a sexual harassment complaint;
- (vi) Order the Respondent to rescind all decisions taken with respect to the Applicant as a result of the unlawfully instituted investigation of him on the basis of a sexual harassment complaint;
- (vii) Order that the Applicant be compensated for the injury he has sustained and the damage caused to him by the withholding of all his emoluments after the time limit set by the Administration (...);

(d) The amount of compensation that the Applicant claims, should the Secretary-General decide in the interest of the United Nations to pay compensation for the injury sustained, as he is empowered to do under article 9, paragraph 1, of the Statute:

...

... requests the Tribunal, given the seriousness of the matter and the extremely arbitrary nature and extraordinarily harmful consequences of the decisions contested, to consider the Applicant's case as an 'exceptional case' that justifies payment of higher compensation than that normally awarded, namely:

(i) Compensation for the grave moral injury resulting from the institution of unlawful proceedings owing to allegations of sexual harassment and from the effects of such proceedings on his personal and professional reputation:

The equivalent of four months' net base salary;

(ii) Compensation for the grave moral injury resulting from the unfair treatment and procedural errors on the part of the Administration from December 1994 to the present:

The equivalent of three months' net base salary;

(iii) Compensation for the grave injury to the Applicant's United Nations career, to his career in general and to his prospects of finding appropriate employment ...

The equivalent of six years' net base salary;

..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 1999 and periodically thereafter until 17 November 2000;

Whereas the Respondent filed his answer on 14 November 2000;

Whereas the Applicant filed Written Observations on 25 May 2001;

Whereas, on 30 May 2001, the Applicant submitted an additional document;

Whereas, on 6 July 2001, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 26 July 2001, the Tribunal decided to postpone consideration of this case until its autumn session;

Whereas the facts in the case are as follows:

The Applicant joined UNDCP, Vienna, as an Associate Liaison Officer, on a three-month short-term appointment, on 2 January 1992. After several extensions of his appointment, the Applicant was assigned to Abidjan, Ivory Coast, as Assistant Director, UNDCP, at the L-III level, on 1 October 1994. The Applicant was reassigned to the UNDCP Regional Office, Nairobi, Kenya, on 29 December 1994.

In its report dated 15 September 1995, an investigation panel established for the purpose of investigating allegations of sexual harassment concluded that the Applicant had conducted himself in a manner that was inappropriate. Subsequently, the Assistant Secretary-General for Human Resources Management issued a written reprimand to the Applicant "for having conducted [himself] in an inappropriate and insensitive manner".

On 12 October, 8 November and 20 December 1995, the Personnel Office, Vienna, requested that the Applicant settle all of his outstanding financial obligations regarding various claims that had been brought to their attention by a number of institutions, including Bank Austria, Evangelisches Krankenhaus and the Erste Österreichische Sparkasse Amt, as soon as possible. The Applicant disputed all claims in his letters of 26 October and 21 November 1995.

In accordance with UNDCP's streamlining of its field office structure, which resulted in the closing down or downgrading of a number of field offices all over the world, the Applicant was advised, on 26 July 1996, that his post had become redundant; that no suitable vacancies were available at the time; that his fixed-term contract due to expire on 30 September 1996 would be extended for three months to help him find other employment opportunities; and, that it would not be possible to retain his services beyond 31 December 1996. Initiatives were taken by both the Applicant and UNDCP between July and December 1996 to explore possible placement opportunities for the Applicant, without results.

On 9 December 1996, the Applicant wrote to the Deputy Executive Director, UNDCP, requesting an extension of his contract in order to assist him in finding a new position. In his reply of 13 December 1996, the Deputy Executive Director, UNDCP, informed the Applicant that efforts to place him elsewhere in the United Nations had not been successful, and reconfirmed that it would not be possible to extend his contract beyond the end of the year. On 16 December 1996, the Director, UNDCP Regional Office, Nairobi, wrote to the Deputy Executive Director, UNDCP,

requesting "exceptionally" an extension of the Applicant's contract for a final 30 days "in order that his departure from Nairobi may be facilitated in the smoothest possible manner", which request was granted on the same day, extending the Applicant's contract through 31 January 1997.

On 5 January 1997, the Washington Post published an article, referring to the Applicant by name in connection with allegations of financial misdeeds, sexual harassment and nepotism on the part of the outgoing Secretary-General with whom he had "close relations". On 9 January 1997, the Acting Spokesman for the incoming Secretary-General stated that following consultations between the Secretary-General, the Director-General of the United Nations Office at Vienna (UNOV), and the Executive Director, UNDCP, the Applicant had been placed on special leave with full pay (SLWFP) and that his contract would not be extended past its expiration date at the end of January 1997. He added that the action had been taken "because of misconduct and mismanagement", that no earlier action had been taken because the charges had to be weighed carefully and fairly and because the Secretary-General had only been in office for six days. He also stated that the Secretary-General had not been aware of the case until the newspaper story had come to his attention. On 10 January 1997, the Chief, Human Resources Management Section (HRMS), Vienna, sent a memorandum dated 9 January 1997 to the Applicant, informing him that the Secretary-General had decided to place him on SLWFP effective immediately and through the end of his current contract.

On 13 January 1997, the Chief, HRMS, advised the Applicant that his final pay as well as his January salary were being withheld, pending submission of proof of payment of outstanding obligations, and pending resolution of the claims by written agreement between the parties. Subsequently, letters were sent out to the creditors, advising them that the Applicant's final payments would be withheld for two months to allow creditors "who have a judgement from a competent court" to present their claims.

On 17 January 1997, the Applicant wrote to the Secretary-General, requesting review of the decision of 10 January 1997 to place him on SLWFP until the end of his contract.

On 6 April 1997, the Applicant lodged an appeal with the JAB, against the decisions to place him on SLWFP; to withhold final payment; not to renew his contract; and, to make defamatory statements about the Applicant in public.

On 23 June 1997, the Applicant requested the Joint Appeals Board, Vienna (JAB), to suspend action on the decision to withhold his final pay and his January salary.

The JAB submitted its report on the request for suspension of action on 17 September 1997. It decided that there were no grounds to suspend action since the decision challenged had already been implemented and the implementation did not cause irreparable harm to the Applicant, and therefore, rejected the request. It further recommended to the Secretary-General not to take any action detrimental to the interests of the Applicant until a decision on the appeal was made or until a final judgement had been issued and that the Respondent's reply be transmitted to the JAB as soon as possible, so that it could consider the case on the merits. On 30 September 1997, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had accepted the recommendation of the JAB to reject the request for suspension and had taken note of the two additional recommendations.

The JAB adopted its report on the merits on 3 July 1998. Its conclusions and recommendations read as follows:

"F. Conclusions and Recommendations

VI. Claim for payment of termination indemnity

43. The Panel noted that the Appellant separated from service after the expiry of his fixed-term contract on 31 January 1997. It also noted that, pursuant to staff rule 209.2, applicable to technical assistance project personnel, a separation as a result of the expiration of a fixed-term appointment on due date, is not a 'termination' within the meaning of that Rule. That as such, and as stipulated in the Appellant's Letter of Appointment of 11 February and 15 March 1994, that separation, not being a termination, does not give rise to a termination indemnity. The Appellant's claim for a termination indemnity is therefore rejected.

VII. Claim for reinstatement

44. The Panel considered whether the Appellant had acquired a right to continued employment by virtue of his being in the service of the Organization for a period of 5 years, i.e., from January 1992 to January 1997. The Panel however doubted whether the Appellant acquired such a right because of a break in service, particularly when the Appellant was engaged as a consultant, and the fact that the 5-year period was only reached with the final one month extension in January 1997. The Panel noted that a little over two months prior to the expiry of the Appellant's contract ... the Respondent notified the Appellant that his fixed-term appointment would not be extended upon its expiry on 30 December 1996; that he advised the Appellant to seek alternative employment and ... made genuine efforts to find alternative employment for the Appellant within the United Nations system, albeit unsuccessfully. The Panel therefore concluded that ... there is no

justification ... for the Appellant's expectation of an extension of his contract. The Appellant's claim for reinstatement is accordingly rejected.

VIII. Claim to overturn the decision to put the Appellant on special leave with full pay and to withdraw defamatory statements

45. Concerning the Respondent's decision to put the Appellant on special leave with full pay (SLWFP) the Panel noted that ... the Secretary-General has the discretion under staff rule 205.3 (a) (i), in exceptional cases, to place an individual on special leave with full pay if he considers such leave to be in the interest of the Organization ...

46. The Panel noted however that the Acting Spokesperson for the Secretary-General made statements to the media, to the effect that the Appellant was put on administrative leave and his contract, which was due to expire, would not be renewed because of the Appellant's misconduct and mismanagement, and that, that decision was taken after a story on that issue (alleging misconduct and mismanagement on the part of the Appellant) was published in the Washington Post (...).

47. The Panel perceives defamatory statements to be statements that are false, the falseness of which is known or ought to be known by the person making them. The documentation in the file proves beyond any doubt that these two constituent elements are present in this case. The Panel expresses its deep concern that the Acting Spokesperson of the Secretary-General volunteered information about the Appellant, which he knew or ought to have known was false. In so doing, he completely disregarded the principle of the presumption of innocence. The Panel noted that as the Respondent did not refute the statements made by his Acting Spokesperson as being the basis for putting the Appellant on SLWFP, and that no investigation was conducted to ascertain the veracity of the allegations made in the media against the Appellant, it found the Respondent's decision in that regard to be arbitrary, an improper use of discretion and a denial of due process to the Appellant. Likewise and for the reasons adduced above, the Panel found those statements to be defamatory. It therefore recommends that the Respondent publicly withdraw the said defamatory statements and issue a formal apology to the Appellant. In addition, the Panel found that the said defamatory statements resulted in damage to the Appellant's reputation and were detrimental to his career prospects. Therefore, the Panel recommends that the Appellant be awarded compensation equal to two months net base salary at the date of his separation from service.

IX. Claim for the payment of the sums owing to Appellant

48. As regards the withholding of the Appellant's salary for January 1997, his accrued annual leave as well as his repatriation grant for himself and his family, the Panel found that ... staff rule 203.13 (b) gives the Secretary-General the discretion to make deductions from salaries and other emoluments of project personnel, for indebtedness to the United Nations and to third parties; and that ST/AI/399 sets out the practical aspects of the implementation of that policy.

49. The Panel noted that, apart from the Appellant's indebtedness to the United Nations for private telephone calls, which the Appellant acknowledged, after identifying such telephone calls, there are two alleged third party claims ...

50. While noting that the Respondent may have acted within the parameters of ST/AI/399 in withholding the Appellant's emoluments referred to in paragraph 48 above, the Panel expresses grave concern that the Respondent invited third parties to submit legally established claims against the Appellant. Considering that almost one and a half years have elapsed since the Appellant's Final Payments were withheld, the Panel therefore recommends that, unless the ... claims are fully and legally substantiated three months as of the date of this report, such Final Payments be released to the Appellant."

On 17 February 1999, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

"The Secretary-General has ... taken note of, and agrees with the Board's finding that your separation from service as a result of the expiration of your fixed-term appointment is not a termination giving rise to a termination indemnity. He has also taken note of, and agrees with the Board's finding that, as you held a fixed-term appointment which expired and which carried no expectancy of renewal or conversion to any other type of appointment, and as the post encumbered by you became redundant, there was no justification, in fact or in law, for your expectation of an extension of your contract. The Secretary-General agrees with the recommendation of the Board that the above two claims be rejected and he has decided to take no action in respect of these two claims.

As regards the decision to place you on [SLWFP] prior to the expiration of your appointment, the Secretary-General notes that the decision is consistent with [s]taff [r]ule 205.3 (a) (i) which authorizes SLWFP if it is determined that such leave is in the interest of the Organization. The Secretary-General does not accept the Board's finding that, in the absence of an investigation to ascertain the veracity of the allegations in the media against you, the decision to put you on SLWFP was arbitrary, an improper use of discretion and a denial of due process ...

As regards the statements made to the press by the then Acting Spokesman for the Secretary-General, note has been taken of the Board's finding that these statements were defamatory because they were false and that fact was known or ought to have been known by the Acting Spokesman. It is noted that the decision not to renew your contract and to place you on SLWFP until your contract expired was characterized as resulting from "misconduct" even though, technically, no disciplinary action had been taken against you. On substance, however, there was ample justification for this decision. The Secretary-General therefore does not accept the Board's recommendation based on its finding in this respect.

With respect to the decision to withhold your salary for January 1997 and final separation entitlements, the Secretary-General has taken note of the Board's consideration that, while the Administration's withholding of those monies was in accordance with ST/AI/399, it was concerned with the Administration's action to invite third parties to submit legally established claims against you. The Secretary-General considers that the facts in this case do not seem to justify the Board's concern as the Administration's request to the alleged creditors to submit their legally established claims against you was made only after you had been notified of such claims and failed to take any action to pay, settle or otherwise resolve those claims.

... The Secretary-General has also taken note of the Board's recommendation that, in view of the time that has elapsed since your final payments were withheld, unless the claims ... are fully and legally substantiated three months as of the date of the Board's report, your final payments should be released to you.

...

Noting that the Board has made no recommendation regarding your indebtedness to the Organization, the Secretary-General has decided, in accordance with [s]taff [r]ule 103.18 (b) (ii), to deduct from your final entitlements the amounts corresponding to the phone-calls you made and subsequently identified as private, as well as the costs for the DHL shipping charges incurred by UNDCP. The Secretary-General has also decided that, in view of the fact that the Austrian Bank's claim has been legally established, the amount left in your final entitlements after payment of your debt to the Organization should be paid to the Austrian Bank.

..."

On 2 March 1999, the Applicant requested the JAB to suspend action on the decision to pay the Austrian Bank the part of his final entitlements, in view of its legally established claim against the Applicant. The JAB decided that it was unable to make any recommendation concerning his request, but stated that it would not be in the interest of the Organization to implement the decision "pending the decision of the Tribunal" in the case. On 12 April 1999, the Under-Secretary-General for Management accepted the JAB's recommendation.

Whereas the Applicant's principal contentions are:

1. The Applicant disputes all allegations of outstanding financial obligations and misconduct involving fraud.
2. The Applicant strongly challenges the lawfulness and fairness of the decision to place him on SLWFP.

3. The decision to place him on SLWFP was arbitrary, amounted to a sanction for disciplinary reasons, and denied him an opportunity to properly defend himself.

4. The Applicant has been seriously injured by defamation, and by flagrant and undeniable administrative injustice.

Whereas the Respondent's principal contentions are:

1. The issue of the investigation into allegations of sexual harassment and the resulting written reprimand is not properly before the Tribunal, as it was not brought before the JAB.

2. The Applicant's contract under the 200 Series of the Staff Regulations and Rules did not carry any legal expectancy of renewal.

3. The non-renewal of the Applicant's contract did not violate his rights.

4. The decision to withhold the Applicant's final entitlements was a valid exercise of the Secretary-General's discretion.

5. The decision to place the Applicant on SLWFP was a valid exercise of the Secretary-General's discretion.

6. The statement made by the Acting Spokesman for the Secretary-General following the article in the Washington Post was not defamatory in nature.

The Tribunal, having deliberated from 6 to 26 July in Geneva and from 1 to 21 November 2001 in New York, now pronounces the following Judgement:

I. The Applicant was part of the project personnel appointed in connection with United Nations technical cooperation projects; he was on a fixed-term contract which was due to end on 31 January 1997.

II. A preliminary procedural issue was submitted to the Tribunal. The Applicant asked the Tribunal to hear six people with whom he has had contact, as witnesses. After reviewing the entire file, the Tribunal feels that it has sufficient information in its possession to make a decision on the case and that it does not need to hear the said witnesses. The facts on which the Tribunal must base

its decision are not contested; the Tribunal's task is to interpret them according to the law and for that it needs no further evidence. The request to hear witnesses is therefore rejected.

III. As to the merits, the Applicant raises four separate issues with the Tribunal:

- The issue of the non-renewal of his fixed-term contract;
- The issue of his placement on special leave;
- The issue of the Administration's withholding of a portion of his salary and benefits at the time of his separation from service;
- The issue of defamatory statements about him.

The Tribunal will consider each point in turn.

IV. The Applicant requests the Tribunal to order the Respondent to rescind his decision not to renew the Applicant's fixed-term contract. That decision was taken on 26 July 1996 on the grounds that the post was being abolished. During the summer of 1996, UNDCP did, indeed, conduct a comprehensive review of its priorities in the face of declining resources.

V. Staff rule 204.3, paragraph (d), provides that: "A temporary appointment does not carry any expectancy of renewal". Therefore under the 200 Series, there is, in principle, no right to extension of a temporary appointment, even after more than five years' service. The Tribunal has repeatedly upheld this interpretation (see Judgements No. 614: *Hunde* (1993); No. 885: *Handelsman* (1999)).

VI. However, the Tribunal has always stated that it monitors the way in which the Administration exercises its discretionary power in order to protect the rights of staff members, particularly their right to be treated fairly. Although the Administration has discretionary power, which means, necessarily, that staff members do not, strictly speaking, have a *substantial right* to secure a particular decision that should be protected, they do, however, have a right to *fair and equitable treatment* because the Tribunal monitors the way in which that power is exercised.

VII. Regarding renewal of a fixed-term contract, while staff members have in any event a right to fair and equitable treatment in terms of the way their case is handled, this right is strengthened

when they have a legal expectancy of the contract's being renewed due to circumstances specific to the case, such as the Administration's behaviour or promises. In that case they have a "legal expectancy" that requires greater protection, which could be described as "legally protected expectation" or, as the Tribunal stated earlier a "reasonable expectancy" or "legitimate expectancy" (see, for example Judgements No. 142, *Battacharyya* (1971); No. 242, *Klee* (1979)). That is not the same as a mere wish or hope that a contract will be renewed.

VIII. The consequences of interference with these different situations involving an increasingly protected range of interests depends on the situation: thus violation by the Administration of a staff member's *right* - that is to say, legally protected interest - results, in principle, in the rescinding of the act committed in violation of that right and restoration of the situation that would have existed had the violation not occurred; violation by the Administration of the *right to fair and equitable treatment* in cases of violation of a *legally protected expectation* does not give rise to the rescinding of the Administration's decision, but does result in compensation which, in principle, will be greater than it would have been in the absence of such expectation, since compensation must be given not only for inadequate treatment but also for the lost opportunity; finally, violation by the Administration of the *right to fair and equitable treatment* results in compensation to the staff member in order to make up for the inadequate treatment to which he/she has been subjected.

IX. Therefore before considering how the Administration handled the Applicant's case, it is necessary to determine whether or not he had a legally protected expectation that his contract would be renewed, given the circumstances of the case.

X. After duly reviewing the material in the file, the Tribunal considers that whereas the Applicant might certainly expect to continue his career with the United Nations, the information he received from the United Nations Administration was not so clear as to justify a claim of a legally protected expectation that his contract would be renewed. The Applicant refers primarily to oral conversations to the effect that the Administration would endeavour to find him another post; that is not sufficient grounds for a legitimate expectancy that a fixed-term contract would be renewed.

XI. It is therefore necessary to see whether, absent special circumstances, the Administration treated the Applicant fairly and equitably when it decided not to renew his fixed-term contract. The decision not to extend the Applicant's contract seems to have resulted from the abolition of his post and in 1996 the Administration seems to have tried to facilitate the Applicant's redeployment or movement to another area. The Tribunal notes, in particular, that the Respondent extended the fixed-term contract twice - from 30 September 1996 to 31 December 1996 and from 1 January 1997 to 31 January 1997. It therefore seems a priori as though the Administration did carry out its responsibilities properly in July 1996; the Tribunal will return to this point in the light of information that came to light later.

XII. The Applicant also asks the Tribunal to rescind the decision to place him on leave with immediate effect, taken on 9 January 1997, just a few days after the publication of an article in *The Washington Post* accusing him of financial improprieties, sexual harassment and nepotism.

XIII. In its reply, the Administration accuses the Applicant of mixing the two decisions - non-renewal of his contract and placement on special leave with full pay. In fact, it was the Respondent who first lumped them together.

XIV. Indeed, the two decisions, though taken at different times, seem to the Tribunal to have been prompted by the same assessment of the Respondent regarding the Applicant. According to the Respondent's own statements, the two decisions were taken in response to the Applicant's shortcomings and unsatisfactory behaviour. The Spokesman for the Secretary-General himself mentioned the case in a press briefing dated 9 January 1997:

"[The Acting Spokesman] said the Secretary-General has consulted with the ... Executive Director, [UNDCP], concerning the case of Cheick Mohamed Tidyane Bangoura who had been accused of *mismanagement and misconduct*. [The Executive Director, UNDCP,] had placed Mr. Bangoura on administrative leave *and* his contract, which would expire at the end of January, would not be renewed." (Emphasis added).

The Tribunal cannot consider this formulation to be a slip of the tongue during a press conference since this analysis was confirmed by another person and, in writing, two years later.

XV. Indeed, on 17 February 1999, the Under-Secretary-General for Management wrote to the Applicant on the matter, stating that:

"As regards the statements made to the press by the then Acting Spokesman for the Secretary-General, note has been taken of the Board's finding that these statements were defamatory because they were false and that the fact was known or ought to have been known by the Acting Spokesman. It is noted that the decision not to renew your contract and to place you on SLWFP until your contract expired was characterized as resulting from 'misconduct' even though, technically, no disciplinary action has been taken against you. On substance, however, *there was ample justification for this decision.*" (Emphasis added)

In other words, not only in January 1997 but again in February 1999, the Administration itself stated that the decisions on non-renewal of the contract and placement on special leave were prompted by the Applicant's unsatisfactory conduct and that the latter justified the decisions.

XVI. The two decisions on non-renewal of the contract and placement on special leave were, as the Spokesman for the executive head of the Organization himself acknowledged, a twofold sanction. Yet no disciplinary proceedings were ever instituted against the Applicant and he therefore did not have an opportunity to defend himself. In particular, staff rule 211.1 provides for appeal to a joint appeals board if the Administration wishes to take disciplinary action against a staff member. No joint appeals board considered the Applicant's case; he was, one might say, summarily judged by the press.

XVII. The Tribunal has on numerous occasions stated that the Administration may not be untruthful about the reasons for its decisions; in particular, it may not, for example, say that it is terminating a contract in the interest of the service when the real reason for its decision is misconduct on the part of the staff member who, as a result of this misuse of procedure, is deprived of the right to defend himself (see Judgements No. 576, *Makwali* (1992); No. 610 *Ortega et al.* (1993), No. 813, *Emblad* (1997)). The Tribunal summarized its judicial decisions on the issue in 1998 (Judgement No. 877, *Abdulhadi* (1998), paragraphs IV and V):

"Despite the stated reasons for the termination, the Applicant in this case was essentially accused of forgery and fraudulent conversion. Where, as here, gross misconduct is alleged, such allegations should be investigated by a disciplinary board or committee.

... The Tribunal thus finds that the decision to terminate the Applicant's appointment was unlawful."

Likewise, the Administration may not cite abolition of post as the reason for not renewing a fixed-term contract when, in fact, non-renewal is a disciplinary action that is being taken in the absence of any prior disciplinary proceedings.

XVIII. The Tribunal considers that in the present case the presumption of innocence was ignored and that the Applicant's right to due process was not respected. It fully concurs with the findings of the Joint Appeals Board:

"The Panel expresses its deep concern that the Acting Spokesperson of the Secretary-General volunteered information about the Appellant, which he knew or ought to have known was false. The Panel noted that the Respondent did not refute the statements made by his Acting Spokesperson as being the basis for putting the Appellant on SLWFP, and that no investigation was conducted about the veracity of the allegations made in the media against the Appellant, it found the Respondent's decision in that regard to be arbitrary, an improper use of discretion and a denial of due process to the Appellant."

XIX. In fact, the Applicant's problems date back to his time in Côte d'Ivoire where he began to encounter difficulties in his relations with the Ivorian Government due, according to him, to the fact that he rejected a corruption attempt. Without going into the specific reasons for the tensions that arose then, the Tribunal takes note of the report of a UNDCP mission to Côte d'Ivoire, in October 1994, which cleared the Applicant of all suspicion against him. What is more, the author of the report went on to say that, in his view, the Ministry of Foreign Affairs of Côte d'Ivoire should apologize or express its regret in some other way in light of what had happened. The Tribunal also notes that, after the Applicant's departure, a legal opinion dated 15 October 1997 from the Office of Legal Affairs at the United Nations in New York also cleared the Applicant of all the accusations made against him while he was in Abidjan. These accusations were repeated by *The Washington Post* and, although refuted, they continued to circulate and were cited by the Administration as the reason for the non-renewal of his contract and his sudden placement on special leave.

XX. As to the issue of the withholding of the Applicant's final salary, pay in lieu of accrued leave and other benefits to which he was entitled at the time of his separation from service, the Tribunal does not dispute that the Administration may deduct certain amounts from what it owes a staff member if the latter is indebted to it or to third parties, pursuant to staff rule 203.13 which states that "Deductions from salaries and other emoluments may ... be made for: (ii) Indebtedness to the United Nations; (iii) Indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General". However, this indebtedness must be duly proven and cannot consist merely of claims from creditors which have not been legally proven. As regards the amounts owed to the Administration, the Tribunal notes that the Applicant repaid the - negligible - amounts that he owed for personal telephone calls and that there is therefore no more indebtedness to it that would justify withholding the money he is due. As regards the Applicant's other alleged debts, the Tribunal is of the view that the Administration cannot continue to withhold the amounts due the Applicant, on behalf of the latter's creditors, including the Erste Österreichische Sparkasse Bank Amt, with which he was involved in litigation, inasmuch as the facts are not at all clear and the Respondent has failed, in the Tribunal's view, to prove beyond a doubt that the Applicant was legally indebted.

XXI. Finally, the Applicant asks the Tribunal to find the Administration guilty of defamation. The Tribunal recalls that it does not have jurisdiction to consider complaints regarding defamation, which fall within the jurisdiction of national criminal courts. Accordingly, it will make no pronouncement regarding the charge of defamation. However, the Tribunal considers that, in the light of the great publicity given to briefings by the Spokesman for the Secretary-General, when accusations are made in that context, even though they have not been considered by a joint disciplinary committee, or have actually been invalidated, this causes serious injury to the person thus thrown to the wolves before the media. In his response the Respondent acknowledges that the statements made by the Spokesman were inaccurate:

"The Respondent regrets any inaccuracies in the statement made by the Acting Spokesman ... the Respondent admits that this statement was incorrect ... to that extent, the statement from the Acting Spokesman was not correct. In the light of the foregoing, the Respondent submits that the inaccuracies were not of a defamatory nature and therefore not harmful to the Applicant's professional reputation".

The Tribunal is concerned that the Spokesman for the executive head of the United Nations should thus disseminate information that has not been verified and that, moreover, is later not corroborated, about a staff member of the United Nations whose reputation is permanently affected as a result, with all the serious consequences that this entails.

XXII. For the foregoing reasons, the Tribunal:

1. Decides that both the decision to terminate the Applicant's contract and the decision to place him on special leave are tainted by abuse of power;
2. That the Applicant is therefore entitled to one year's net base salary by way of compensation, that being the proper reparation due him;
3. Decides, further, that since his reputation has suffered serious injury as a result of information disseminated in a United Nations press briefing, the Applicant is entitled to reparation for the moral injury suffered, in the form of, on the one hand, financial compensation in the amount of 50,000 United States dollars, and, on the other, publication of the pronouncements of this judgement in a United Nations press briefing within three months of the judgement;
4. Decides that the Administration cannot continue to withhold the sums due the Applicant and must therefore pay them to him;
5. Rejects all other pleas.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Spyridon FLOGAITIS
Member

Brigitte STERN
Member

New York, 21 November 2001

Maritza STRUYVENBERG
Executive Secretary