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ADMINISTRATIVE TRIBUNAL

Judgement No. 967

Case No. 1028: OGBEWE

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; M. Victor Yenyi Olungu;

Ms. Marsha Echols;

Whereas, on 24 March 1998, Mariere Efezino Ogbewe, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 14 July 1998, the Applicant, after making the necessary corrections, again filed an application containing the following pleas:

**“II. PLEAS**

The Applicant respectfully moves the UN Administrative Tribunal to rule the following:

- II.1. Cancel the decision of February 26, 1998, rendered by the ... Under-Secretary-General for Management, ... and have any reference thereto expunged from the Applicant's records.
- II.2. To order the production, by the Respondent, of the full transcription of the [Joint Disciplinary Committee (JDC)] hearings conducted in 1997 (...), i.e. including the transcript of the missing tapes, respectively of the tapes the transcription of which was allegedly impossible.

...

- II.4.2. Order the immediate reinstatement of the Applicant into his functions according to the five-year contract due as per December 1996 onwards, with all formal and material consequences attached thereto as well as the reimbursement, to the Applicant, of all costs incurred by the latter during this proceedings as well as during the investigation by the OIOS [Office of Internal Oversight Services] and by the JDC
- II.4.3. In particular, also order the payment, by the Respondent to the Applicant, of the equivalent of five month's salary withheld without justification from March to July 1997 as well as the amount of salary (3 months) corresponding to accumulated leave carried over from 1996 to 1997, with accrued interest at the rate of 8%.

II.5. SUBSIDIARILY:

If the UN Administrative Tribunal was to reject the Applicant's main plea for reinstatement:

- II.5.1. Sentence the Respondent to pay to the Applicant the equivalent of salary as if the five-year contract as per December 1996 onwards had been respected, under deduction of the salaries already received.
- II.5.2. Sentence the Respondent to pay to the Applicant the contributions due to the latter's pension fund until the ordinary date of retirement notwithstanding the payments claimed under point II.4.3. and II.5.1. herein above.
- II.5.3. Allow the Applicant to establish, by all legal means including the production of documents and the hearing of witnesses, the correctness of his assertions made before this Tribunal.

II.6. *REGARDING ORAL PROCEEDINGS:*

The Applicant leaves it to the UN Administrative Tribunal to decide whether it deems oral proceedings and the hearing of witnesses appropriate."

Whereas the Respondent filed his answer on 21 June 1999;

Whereas the Applicant filed written observations on 28 October 1999;

Whereas, on 19 November 1999, the Tribunal informed the parties that it had decided to adjourn consideration of the case until its next session;

Whereas, on 19 November 1999 and 2 August 2000, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the Applicant submitted an additional document on 13 June 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations in 1987, as a Junior Professional Officer at grade L-1 with the United Nations Development Programme (UNDP)/United Nations Industrial Development Organization (UNIDO), duty station Islamabad, Pakistan. In August 1989, he was assigned to UNIDO Headquarters in Vienna, first as an Associate Expert, Economic and Country Research, and in March 1990, as an Associate Expert, Programme and Projects Development. On 13 October 1991, the Applicant joined the International Trade Centre (ITC) as a Trade Promotion Officer, at the P-3, step 1 level.

Following a meeting with the Applicant on 28 May 1993, the Coordinator for Economic Development Office of the Executive Governor, Enugu State, Nigeria, Ms. Loretta John-Ukegbu, wrote a letter dated 4 June 1993 to the Chief, Office for Africa, Division of Technical Cooperation (DTC), ITC, requesting technical assistance to develop exports of several agricultural products from Enugu State.

By letter dated 29 June 1993, the Chief, Office for Africa, DTC, ITC, informed Ms. John-Ukegbu that ITC, UNDP, and the Nigerian Federal Ministry of Trade and Tourism were in the process of designing a programme to develop and promote selected products from Nigeria. In this context, her request could be embodied in such a programme and she would be contacted in due course to determine project sites and product groups.

By letter dated 2 November 1993, Ms. John-Ukegbu submitted a formal application to be included in ITC's roster of experts. Her personal history statement (PHS) showed her maiden name to have been "Aniagolu" and the Applicant to be one of her referees.

By letter dated 6 December 1993, the Resident Representative in Sierra Leone informed the Chief, Office for Africa, DTC, ITC, of the launching of a project in Sierra Leone: "Export development, diversification and promotion".

From 4 to 9 April 1994, Ms. John-Ukegbu visited ITC to discuss Enugu State's involvement in the UNDP/MOCT Programme. During this time, she met twice with the Applicant.

On 8 April 1994, a savings account (No. 776.593.MIL) was opened with the Union Banque Suisse (UBS Bank), in Geneva, in the name of Ms. Loretta Aniagolu.

By letter dated 26 April 1994, the Roster Office, ITC, provided a copy of the Coordinator's PHS to the Applicant and requested him to provide a "candid appraisal" of her.

On 28 April 1994, the Applicant completed the relevant appraisal form, stating *inter alia* that he had known the Coordinator since 1977 as a friend and as a colleague.

In May 1994, the Applicant went on mission to Sierra Leone and Nigeria. During his visit to Nigeria he met with Ms. John-Ukegbu. By letter dated 6 June 1994, the Chief, Selection and Recruitment Section, Division of Administration, ITC, informed Ms. John-Ukegbu of her inclusion in ITC's roster of experts.

Between 16 June and 28 October 1994, correspondence was exchanged between all the parties regarding a project, including as one of its components export feasibility studies in Sierra Leone.

In a Note for the File dated 25 January 1995, the Applicant stated that, in view of the security situation in Sierra Leone, the Resident Representative of UNDP in Sierra Leone had requested that the proposed studies be undertaken as soon as possible. The Applicant attached a list of three companies that could participate in the bidding for the studies' subcontract, including the Trade Consultancy Group (TCG) from Nigeria. The representative of TCG was Ms. Aniagolu.

By memorandum dated 27 January 1995 addressed to the Chief Financial Management Section, Division of Administration, ITC, the Chief, Office for Africa, DTC, ITC, forwarded the above-mentioned Note for the File and the list of companies provided by the Applicant.

By memorandum dated 20 March 1995 to the Chief Financial Management Section, Division of Administration, ITC, the Applicant proposed retaining the services of TCG, i.e. the lowest bidder, to conduct the studies in Sierra Leone for ITC. At the same time the Applicant pointed out the need to expedite the approval process so that the studies could begin as soon as possible.

By memorandum dated 23 March 1995 to the Chairman and Members of the Committee on Contracts, the Secretary of the Committee on Contracts requested the approval by circulation of the proposed subcontract for the studies.

On 4 April 1995, following endorsement by the Office for Africa and ITC's Committee on Contracts, a contract for US\$144,900.00 was issued in favour of TCG. The amount of the contract was to be paid by ITC in three instalments.

On 25 April 1995, the representative of TCG, Ms. Aniagolu, countersigned the contract for the studies. On the same date, ITC paid the first instalment due to TCG for the studies by depositing US\$43,470.00 in UBS Bank account No. 766.593.MIL, in the name of Ms. Aniagolu.

On 28 April 1995, an amount of SwF 43,300.00 (US\$37,370.00) was transferred from Ms. Aniagolu's account to that of the Applicant's account (UBS Bank account No. 441.449.60.E).

During May 1995, the Applicant went on mission to Sierra Leone in connection with the studies. On 7 June 1995, the second instalment of US\$31,370.00 was deposited in Ms. Aniagolu's account.

On 15 June 1995, Ms. Aniagolu submitted, on behalf of TCG, the final report of the feasibility studies and the invoice for the final payment.

In a letter of 12 July 1995 to Ms. Aniagolu, the Chief, Financial Management Section, Division of Administration, ITC, contested the invoice presented by TCG and requested a new invoice.

On 27 September 1995, a New York law firm (Madu, Edozie & Madu P.C.) wrote to the Chief, Financial Management Section, claiming payment, on behalf of TCG, of a final amount of US\$57,960.00.

On the same date, the law firm wrote to the Applicant claiming reimbursement, on behalf of Ms. Aniagolu, of US\$53,000.00 that the Applicant allegedly removed from her UBS Bank account.

On 21 May 1996, the Applicant was requested by Ms. Aniagolu's lawyer to reimburse an amount of US\$25,000.00 allegedly transferred by him from her account to another account.

On 7 June 1996, ITC reached an agreement with TCG regarding the final instalment. The final instalment, US\$20,970.00, was paid to the said New York Law firm of Madu, Edozie & Madu P.C., acting for TCG.

On 11 July 1996, the Applicant wrote a letter to the Senior Legal Officer, Legal Liaison Office, Geneva, requesting assistance to protect himself from accusations by TCG and its lawyers.

On 3 October 1996, Ms. Aniagolu's lawyer filed a criminal complaint with the Geneva Authorities against the Applicant, on behalf of his client.

On 15 October 1996, the Applicant wrote a memorandum to the Director, Division of Administration, ITC:

- "a) Informing him of the reception of the "Commandement de payer" and the blocking of his UBS account; and
- (b) Requesting assistance to rebut the criminal complaint against him ..."

On 17 October 1996, ITC informed OIOS that the Applicant's bank account had been blocked by the Swiss law enforcement authorities in connection with a criminal complaint by Ms. John-Ukegbu, a consultant employed by ITC. Based on a preliminary examination of the matter, OIOS concluded that an enquiry was warranted.

On 8, 9 and 10 January 1997, the Applicant was interviewed by investigators from the OIOS in connection with the accusations made by Ms. John-Ukegbu.

On 13 January 1997, and based on preliminary findings, the Applicant was suspended with full pay until 3 March 1997 pending the final results for the investigation conducted by OIOS.

On 14 January 1997, OIOS investigators held a telephone interview with the consultant in connection with her accusations.

By memorandum dated 3 March 1997, the Director, Division of Administration, ITC, informed the Applicant that, following the results of the OIOS investigation, he was being placed on suspension without pay.

On 17 March 1997, the Applicant received the English version of the OIOS report, and on 14 April 1997, he submitted his comments on the full OIOS report.

On 28 April 1997, the Director, Division of Administration, ITC, forwarded the Applicant's comments on the OIOS report to the Assistant-Secretary-General, Office for Human Resources Management.

On 24 July 1997, the Executive Director of ITC informed the Applicant that his case would be referred to the Joint Disciplinary Committee (JDC).

By a memorandum dated 25 July 1997, the Executive Director of ITC referred the Applicant's case to the JDC, following the recommendation of the Legal Counsel and informed the Secretary of the JDC of the following:

- "a. [The Applicant] had been 'accused of unauthorized withdrawals of funds by a Consulting Partner responsible for a subcontract carried out on behalf of ITC'
- b. OIOS had been requested to conduct an investigation of the matter and preliminary findings warranted the suspension of [the Applicant] as of 13 January 1997 'pending the final results of the investigation'
- c. On receipt of the final report from OIOS [the Applicant] had been suspended without pay and was provided with a copy of the report for comments; and
- d. The comments provided by [the Applicant] together with the final OIOS report had been transmitted to the Office of Human Resources Management (OHRM) and the Office of Legal Affairs (OLA) at United Nations Headquarters in New York."

By a letter dated 9 September 1997, the Director, Division of Administration, ITC, informed the Applicant that his suspension without pay had been converted to suspension with full pay effective 25 July 1997.

The JDC adopted its report on 22 January 1998. Its findings, conclusions, recommendation and special remark, read, in part, as follows:

"...

b. *Financial transactions*

107. Based on the evidence before it, the Panel established that:

- a. The staff member advanced US\$ 25,000.00 to Ms. Aniagolu, a Consultant working for ITC;
- b. On 28 April 1995, there was a transfer of SwF 43,300.00 from Ms. Aniagolu's account to the staff member's account;

c. In May 1995, during his Mission to Sierra Leone for the studies, the staff member carried with him US\$ 36,000.00 in cash, of which he handed US\$ 25,000.00 to Ms. Aniagolu in Sierra Leone. The difference of US\$ 11,000.00 was allegedly given to the staff member's friend Mr. Tony Onyemaka in Nigeria;

d. On 26 June 1995, there was a transfer of US\$ 31,000.00 from Ms. Aniagolu's account to Mr. Charles Ayemoba's account in London; and

e. On 4 October 1995, there was a transfer of US\$ 25,000.00 from Ms. Aniagolu's account to Ms. Georgina Kahama's account in Geneva.

...

c. *Abuse of office*

...

ii. *Concealment of personal relations*

129. Concerning this charge, the staff member had an irrefutable defence. On the appraisal form he filled concerning Ms. John-Ukegbu on 28 April 1994, he indicated clearly that he had known her as a 'friend' and 'colleague' since 1977. Formally, therefore, the accusation of failure to disclose a personal relationship relevant to the subcontract awarded to TCG is vitiated; it is, rather, ITC that was at fault in failing to check - or, perhaps, in failing to maintain a database that enabled it to check - whether it had evidence of a personal relationship between the potential contractor and any members of its staff.

130. Curiously, however, the staff member did not use this defence ...

131. Circumstantial evidence on the file strongly suggests the possibility that the staff member knew well before 1995 that Ms. Loretta John-Ukegbu and Ms. Loretta Aniagolu were the same person.

132. However, the staff member persistently maintained that it was not until May 1995 that he 'made the match' between Ms. Loretta John-Ukegbu and Ms. Loretta Aniagolu. In the absence of definite evidence on this point, the Panel believes that the benefit of the doubt applies in favour of the staff member.

...

## CONCLUSIONS AND RECOMMENDATIONS

136. First, the Panel concludes that due process of law was not violated and therefore the staff member's claim of breach of due process fails.

137. Second, the Panel concludes that the staff member not only engaged in financial transactions involving UN funds but also exposed the Organization to grave risk by carrying large sums of money in connection with a project he was supervising. As an aggravating factor, he involved personal funds by advancing a Consultant US\$ 25,000.00 from his personal funds. Therefore, the Panel considers that sufficient elements substantiate the first charge.

138. Third, the Panel concludes that the staff member indeed made false representations when acting as referee for a candidate for ITC's roster of Consultants, and concealed personal relations relevant to the project by not disclosing in due time his relationship with a Consultant under a project he was supervising. Therefore, the Panel considers that sufficient elements substantiate the second charge.

139. Fourth, the Panel notes with concern that although the staff member used on his behalf the argument of 'checks and balances' inside ITC, he voluntarily overlooked those checks and balances when it came to disclosing his financial arrangements with Ms. Loretta Aniagolu and the 'match' he made during his May 1995 mission to Sierra Leone. The Panel is of the opinion that this selectivity on the part of the staff member was not in the interest of the Organization, was not justified and demonstrates that the staff member is unworthy of the Organization's trust.

140. In light of the above, the Panel recommends to the Secretary-General that the staff member be *summarily dismissed*, on the grounds of serious misconduct incompatible with the basic requirements to be met by a United Nations staff member.

## SPECIAL REMARK

141. The Panel notes that paragraph 18 (a) of ST/SGB/273, i.e. 'Establishment of the Office of Internal Oversight Services', the principal document available to staff members on the work of OIOS, states that OIOS investigations shall be conducted with proper regard for *due process*, a term that the document does not define. The case at hand shows that the average staff member is likely to interpret *due process* as the term is defined in paragraph 17 of ST/AI/371, only applying to disciplinary proceedings and not to OIOS investigations.

142. With a view to preventing delays in the administration of justice and protecting the interests of staff members and the Organization, the Panel *recommends* that what due process is, at the stage of an OIOS investigation, be unambiguously defined in language that

the ordinary staff member can understand and that the definition be distributed to all UN staff.”

On 26 February 1997, the Under-Secretary-General for Management transmitted to the Applicant a copy of the JDC report and informed him, in part, as follows:

"... The Secretary-General has given careful consideration to the [Joint Disciplinary] Committee's analysis of the charges and the defense you presented and he is in agreement with the findings and conclusions of the Committee. He has decided to accept the conclusions of the Committee as follows:

- Due process of law was not violated in your case and therefore your claim of breach of due process fails.
- You not only engaged in financial transactions involving United Nations funds but also exposed the Organization to grave risk by carrying large sums of money in connection with a project you were supervising. As an aggravating factor, you involved personal funds by advancing a Consultant US\$25,000.00 from your personal funds. Therefore, sufficient elements substantiate the first charge against you stated above.
- You indeed made false representations when acting as referee for a candidate for ITC's roster of Consultants, and concealed personal relations relevant to the project by not disclosing in due time your relationship with a Consultant under a project you were supervising. Therefore, sufficient elements substantiate the second charge against you stated above.

The Secretary-General has also decided to accept the conclusion of the Committee that your selectivity in connection with the awarding of the contract to the chosen Consultant was not in the interest of the Organization, was not justified and demonstrates that you are unworthy of the Organization's trust.

The Secretary-General is in agreement with the Committee that your conduct constitutes serious misconduct incompatible with the basic requirements to be met by a United Nations staff member and he has decided to accept the recommendation of the Committee regarding disciplinary sanction. Accordingly, he has decided to summarily dismiss you pursuant to staff regulation 10.2, paragraph 2, and staff rule 110.3 (a) (viii) with effect from the date you receive this letter. In accordance with the Staff Rules and Regulations, you shall not be given pay in lieu of notice nor shall you be given any termination indemnity or repatriation grant.

..."

On 14 July 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied due process by the OIOS, the JDC and by the Respondent.
2. The conditions for applying staff rule 110.3 (a) (viii) were not fulfilled in this case.

Whereas the Respondent's principal contentions are:

1. The Secretary-general's decision to summarily dismiss the Applicant was a valid exercise of his discretionary authority and was not vitiated by substantive irregularity, procedural irregularity, improper motive, abuse of discretion, or any other extraneous factors.
2. The Applicant failed to meet the standards of conduct required of staff members and international civil servants.
3. The Applicant's due process rights were fully respected.

The Tribunal, having deliberated from 1 to 24 November 1999 in New York and from 6 July to 3 August in Geneva 2000, now pronounces the following judgement:

I. The case may be summed up as follows: as a Trade Promotion Officer in the ITC's Office for Africa, the Applicant was responsible for, *inter alia*, identifying needs for technical cooperation regarding trade promotion and export development and managing and coordinating all the operations necessary for implementation of the Centre's projects. As such, he had to deal in 1993 with project SIL 93/007 concerning specialist studies of Sierra Leone's export potential. The objective of the studies was to provide the country with the technical assistance and support needed to enhance its economic capacity.

The Centre chose as a consultant for this project Ms. Loretta Aniagolu Ukegbu, who claimed to have known the Applicant at university. It was she who informed the Centre of improper conduct by the Applicant, accusing him of having misappropriated money earmarked by

the Centre for a Nigerian company, the Trade Consultancy Group (TCG), of which she was the principal shareholder. Further to this complaint and at the Centre's request, the OIOS carried out a preliminary investigation covering the procedure for the selection of consultants, the Applicant's links with the consultant, related banking transactions and the possibility that bribery had occurred.

The preliminary investigation having resulted in recommendations to the Respondent to institute disciplinary proceedings with a view to the Applicant's dismissal for serious professional misconduct and his prosecution by the Swiss authorities and to remove Ms. Loretta Aniagolu Ukegbu from the list of consultants, the case was submitted to the JDC, which found the Applicant guilty of dishonesty, unbecoming conduct, unlawful financial dealings and exposure of the Organization to serious risk through having carried substantial sums of money on his person. The JDC accordingly recommended the Applicant's dismissal; the Respondent accepted the Committee's conclusions and recommendations and summarily dismissed the Applicant on 26 February 1998.

II. The Applicant seeks the cancellation of the above decision and requests the Tribunal to order his reinstatement into his functions and grade, the production of the transcripts of the hearings conducted in 1997 and the payment of costs, five months' salary withheld by the Applicant and three months' salary corresponding to accumulated annual leave carried over from 1996 to 1997, with accrued interest at the rate of 8%.

As alternatives, he requests the Tribunal to order the Respondent to pay him the equivalent, minus the sum already received, of the salary he would have received had his five-year contract from December been honoured, together with the contributions due to the Pension Fund until the normal date of retirement. He further requests permission to establish by all legal means the correctness of his assertions and leaves it to the Tribunal to decide whether oral proceedings would be appropriate.

The Applicant alleges that the investigation was not conducted in the prescribed manner by the officials of OIOS or before the JDC. He further claims that since the Geneva courts shelved the case, the disciplinary proceedings instituted against him are no longer justified.

III. The Tribunal considers oral proceedings unnecessary.

IV. In this case, with its constantly varying and contradictory statements, the Tribunal will, in the light of its Judgement No. 890, *Augustine* (1998), confine itself to examining whether the acts that gave rise to the disciplinary penalty of dismissal were proven and constituted serious misconduct. It will also examine the case file to determine whether there were procedural errors or abuses of discretionary power. Lastly it will consider whether the punishment imposed was proportional to the conduct in question.

V. Concerning the facts that gave rise to the disciplinary penalty of dismissal, the Tribunal considers that, irrespective of the reasons behind it, the mere fact that the Applicant, who was responsible for assessing the project and certifying payments for subcontract work performed by the consultant, transferred 43,300 Swiss francs from her account to his own is indicative of the existence between the Applicant and the consultant of, if not collusion, personal relations of a nature likely to lead to defalcation concerning moneys paid for work performed under the contract financed by the ITC. The Tribunal finds that similar relations obtained regarding the loan of 25,000 dollars that the Applicant made to the consultant from his own funds without consulting or informing the Centre's management. The Tribunal further observes that the Applicant incurred a considerable risk by carrying on in person during an official mission to Sierra Leone and Nigeria 36,000 dollars in cash and thereby exposed the Organization to proceedings had that substantial sum of money gone missing. Lastly, the Applicant's concealment of his relations with the consultant leads the Tribunal to conclude that, in his attitude towards the Organization, the Applicant gave precedence not to the interests of the Organization, which was entitled to his loyal and efficient supervision of the consultant's obligations towards it, but to his friendship with the consultant and his personal benefit. The Applicant's allusions to an error of judgement and unawareness of the applicable ethical rule are significant of admission of his misconduct. The Tribunal is therefore, of the opinion that the

Respondent rightfully instituted disciplinary proceedings against him.

VI. With respect to the procedural errors and abuses of discretionary authority that the Applicant alleges occurred during the investigation by the OIOS and in the handling of his case by the ITC and the JDC, the Tribunal observes that, when deciding to establish the OIOS, both the General Assembly, in its resolution A/RES//48/218 B of 12 August 1994, and the Secretary-General, in his circular ST/SGB/273 of 7 September 1994, guaranteed due process during preliminary investigations by officials of the Office. As the circular does not adequately define the procedure to be followed by officials of the Office during preliminary investigations, the Tribunal, pursuant to the legal principle that no court may refrain from giving judgement on the grounds that the law is silent (ILO Administrative Tribunal, Judgement No. 11 of 12 August 1953, *Micheline Desgranges*), expresses the opinion that due process means the right for the staff member, once the Office's investigator determine the existence of possible wrongdoing, to be heard and/or informed of the findings and to provide evidence and explanations. The Tribunal notes in this respect that the common law principle known as due process is not static. It calls for equitable conduct, but the nature and modalities of that conduct vary according to the circumstances. Due process following a preliminary investigation does not give rise to the same requirements as during a trial. At all events, due process in all situations requires that the fundamental rights of the individual should be respected. In the case in question, the Tribunal believes that the hearing of the Applicant was properly conducted and that both in the course and upon the conclusion of the preliminary investigation the Applicant freely and voluntarily answered the allegations made against him. The Tribunal considers the Applicant's contention of breach of the principle of presumption of innocence irrelevant: an investigator's task of determining the facts of a case cannot be accomplished otherwise than by confronting the staff member with the evidence against him and recording his responses, and there is no question of any erosion of the presumption of innocence. Concerning the other procedural errors to which the Applicant alludes:

- (a) Failure to inform him clearly of the charges and denial of the right to cross-examine witnesses;
- (b) Recommendation by the OIOS of sanctions against him;
- (c) Use of English in the Office's interviews with him and of French in its report on

those interviews; and

(d) His suspension without pay by the ITC, the Tribunal, which endorses the JDC's arguments and conclusions regarding these allegations, finds that the complaint of denial of the right to cross-examine witnesses was an attempt to delay the investigation at a time when relevant material was already on file. It also notes that the investigators' efforts to contact one of the witnesses, namely the Applicant's friend in Nigeria, by telephone were frustrated because the number they had been given was unavailable. The Tribunal further notes that the Applicant contradicted all the assertions made from Africa by the consultant. With respect to the recommendation by the OIOS to refer the case to the JDC, it is clear that the Office complied with resolution 48/218 B and the texts by the Secretary-General by which it was established. Regarding the complaint that jurisprudence cited by the Applicant was ignored, the JDC's response is sufficient; the claim fails. The same applies to the claim concerning the use of English in the interviews and of French in the report.

With respect to the Applicant's suspension without pay, the Tribunal, while accepting the arguments of the JDC, observes that it has been unable to find any evidence of unlawfulness, arbitrariness or abuse of authority in the reasoned decision taken by the Respondent in the exercise of its discretionary authority and communicated to the Applicant in the letter of March 1997. The Tribunal considers the Applicant's maintaining of personal relations with a consultant placed under his supervision and transfer of funds deposited by the Organization in the consultant's account as behaviour that could justifiably give rise to concern and suspicion on the part of the Respondent regarding the Applicant's trustworthiness. It is therefore quite legitimate that the Respondent should have been concerned about the possibility of various forms of corruption or even bribery and have initiated the inquiry that led to the suspension. Lastly, the Tribunal considers the Applicant's claim that two members of the JDC should have been barred on the grounds of their French nationality as unfounded, the Applicant having provided no evidence of prejudice or hostility towards himself on their part. The Tribunal refers in this regard to its Judgements No. 181, *Nath*, para. VIII et No. 189, *Ho*, para. XVIII. Regarding the production of the recordings of the proceedings before the JDC, the Tribunal considers that it is already sufficiently well-informed about the case and that the said production would delay its proceedings; it therefore rejects the Applicant's request

VII. With regard to the Geneva public prosecutor's shelving of criminal proceedings, the

Tribunal considers the action in question as provisional and attributable to the Applicant's absence from Switzerland since 28 February 1998. It deduces from this that the said action is without effect for disciplinary proceedings aimed at determining whether the staff member had failed in his professional duties and obligations.

VIII. In support of his final allegation of procedural irregularity, the Applicant states that, whereas his contract ended on 28 February 1998, he received his letter of dismissal on 2 March 1998. He contends that he could not be dismissed since he was no longer in the Organization's employ. Further to the information given by the Respondent, the Tribunal considers, having found that the facsimile communication on file is dated 26 February 1998, two days prior to the expiry of the Applicant's contract, that by submitting in evidence only the second page of the letter of dismissal the Applicant rendered it incapable of fulfilling its duty of verification. Moreover, there is no evidence in the case file of the date of receipt of the letter of dismissal. Since, in fact, the validity of a dismissal does not depend on the staff member's acceptance of the dismissal, the Tribunal considers that the date to be taken into account is that of the signing of the decision.

IX. In the light of the foregoing, the Tribunal considers that in his conduct the Applicant had a conflict of interest with the ITC whose employee he was, and that he failed in his duty by breaching the obligation of honesty, dignity and discretion imposed upon him by the Charter of the United Nations. It finds, therefore, that the Applicant was guilty of serious professional misconduct and that the penalty of dismissal was proportional to the charges laid against him.

X. For the foregoing reasons, the Tribunal declares the application to be unfounded.

(Signatures)

Mayer GABAY  
Vice-President, presiding

Victor YENYI OLUNGU  
Member

Marsha A. Echols  
Member

New York, 3 August 2000

Maritza STRUYVENBERG  
Executive Secretary

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