



ADMINISTRATIVE TRIBUNAL

Judgement No. 1337

Case No. 1418

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, Vice-President; Mr. Julio Barboza;

Whereas, on 20 April 2005, a 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 the Applicant, after making the necessary corrections, resubmitted his Application, which was received by the Tribunal on 5 May 2005, requesting the Tribunal, inter alia:

“7. With respect to competence and procedure ...

...

(c) *to decide* to hold oral proceedings

On the merits ...

(a) *to rescind* the decision of the Secretary-General finding that misconduct occurred and imposing the disciplinary penalty of a fine in the amount of one month's net base salary on the Applicant;

(b) *to order* that the conclusions and recommendations of the majority of the [Joint Disciplinary Committee (JDC)] Panel be upheld;

(c) *to find and rule* that the minority opinion of the Chairman of the [JDC] that formed the basis for the Secretary-General's decision erred in matters of law and fact in its conclusions;

(d) *to find and rule* that the decision of the Secretary-General and his actions during the course of the case were improperly motivated by prejudice and other extraneous factors;

(e) *to award* the Applicant three years' net base salary as compensation for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof; [and,] in view of the special circumstances of the case,

(f) *to award* the Applicant as cost, the sum of US\$ 10,000 in legal fees and disbursements."

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 15 October 2005, and twice thereafter until 30 November;

Whereas the Respondent filed his Answer on 30 November 2005;

Whereas the Applicant filed Written Observations on 28 July 2006 and, on 25 September, the Respondent commented thereon;

Whereas, on 9 July 2007, the Tribunal decided not to hold oral proceedings in this case.

Whereas the statement of facts, including the employment record, contained in the report of the JDC reads, in part, as follows:

“II. Employment history

... [The Applicant] served the United Nations in a number of peacekeeping operations, from 1990 to 2001. ... On 28 February 2001, [the Applicant] was offered a one-year fixed-term appointment at the P-5, step V, level as Investigator in the Office of Internal Oversight Services (OIOS). His appointment was subsequently renewed. On 8 April 2004, he was placed on suspension with full pay, pending disciplinary proceedings.

III. Background leading to the charges

... The alleged misconduct relates to 'unauthorized contacts with a journalist and others and ...unauthorized disclosures of confidential information ...' with respect to the OIOS investigation into the presence of a Cockpit Voice Recorder (CVR), commonly referred to as the 'black box' case, in the Aviation Safety Unit of the Department of Peacekeeping Operations [(DPKO)] ...

... On 10 March 2004, the publication of an article in the French newspaper 'Le Monde' alleged that the United Nations had in its possession the CVR pertaining to the Rwandese presidential aircraft which was gunned down on 6 April 1994 while approaching Kigali International Airport in Rwanda, killing the Presidents of Rwanda and Burundi. This event set off the Rwanda genocide.

... On 11 March 2004, the Spokesman for the ... Secretary-General told a press briefing that the United Nations did in fact uncover a CVR and was investigating whether this was the CVR on the downed jet. He added that the CVR was being given to an outside firm for analysis of its content. The Spokesman indicated that the Secretary-General had instructed OIOS to investigate the matter. ...

... According to ... [the] Head of the Investigations Department (ID) of OIOS [(ID Director)], upon the request by the Secretary-General to investigate whether the 'black box' had been in the presidential aircraft and why it was found untested and unreported in a cabinet in DPKO, Mr. M. G. was designated as the lead investigator. He was assisted by [three] ... investigators ... According to [the ID Director] and confirmed by the Administration's witnesses, [the Applicant]'s involvement with the case was as follows:

i) listen to the tape with [another staff member,] Mr. M.; ii) attempt to locate two members of the French military; and iii) provide occasional linguistic assistance to [one of the investigators]. ...

... [The 'black box' was] examined by the United States National Transportation Safety Board (NTSB) ... According to [the ID Director], four sets of CD ROMs were prepared by the NTSB technicians for OIOS. ...

... On 17 March 2004, following the examination by the NTSB of the CVR, [the Spokesman] announced that 'some conversation in French could be heard on the 30-minute tape but nothing so far links the CVR to the crash on 6 April 1994 of the plane carrying [the two Presidents]...' ...

... On 18 March 2004, [the Applicant] and Mr. M. (both native French-speakers) were tasked by [the ID Director] to listen to the audio prepared by NTSB, in order to learn its content. They listened to the audio in [the Applicant]'s office the same day; both agreed that it was inaudible. They also noticed that the audio had the same conversations at the beginning and at the end and they agreed that a scientific analysis would be necessary. On the same day, both ... met [with the ID Director] in her office. [The Applicant] claimed that during that meeting, he proposed and obtained [the ID Director's] accord to conduct an 'informal-informal' research with respect to the case. [The ID Director] and Mr. M. dispute this ...

... On 19 March 2004, [the Applicant] invited to his office ... a French flight specialist and played him the audio. According to [the Applicant], the flight specialist shared his and Mr. M.'s impression of the audio that the start and end of the audio sounded the same. [The Applicant advised the ID Director that the French flight specialist] had offered to 'contact informally' and did contact a number of his friends at Dassault Aviation and other connections who might be able to provide relevant information in connection with the 'black box'.

... On 23 March 2004, [the Applicant] met [with the ID Director] to discuss his findings on the case. According to [the ID Director], in view of [the Applicant]'s statement that the audio had been 'manipulated', she urged him to brief Mr. M. G. accordingly. On the same date, [the Applicant] met Mr. M. G. and reiterated his impression that the audio had been manipulated. According to Mr. M. G., (...), he requested verbally [the Applicant] 'to stop any activity [he] may be undertaking on the CVR investigation and provide [him] with a written account of his activities and development. [The Applicant] agreed to the request.' However, [the Applicant] denied that such request had ever been made. Mr. M. G. never received any written account until 2 April 2004.

... On 25 March 2004, [the ID Director] addressed an e-mail to [the Applicant] and to Mr. M. reminding them of the need to follow procedures 'which provide [ID/OIOS] with some protection from unintended consequences'. [The ID Director] instructed both ... to stop any activity in connection with the 'black box' case, except for those specifically requested to do by Mr. M. G. or her. [The ID Director] specifically wrote that 'a request to sniff around to find one person or to listen to a recording cannot be read as a brief to do more. Moreover, before an outsider is involved in any of our matters, it must be cleared first ...' ...

... On 30 March 2004, [the Applicant] was asked to send letters to some French aviation officers. ...

... On 31 March 2004, [the Applicant] forwarded to [the ID Director], with copy to Mr. M., a reply by a Dassault Aviation officer. [The Applicant] stated: 'This answer was expected as I informed you on issues driven by the informal informal. Let me know what ID should envisage as a possibility. Let me know if you want me to answer this letter in acknowledging the reception of this answer.' [The ID Director] replied stating: 'Thanks, no, I think I will need to discuss with [the Under-Secretary-General, OIOS,] next week. So, nothing further should be done.'

... [Also on] 31 March 2004, [another article was published] in 'Le Monde'. The article explained that the analysis of the CVR failed to reveal any 'evidence that could link [the CVR] to the crash of the President of Rwanda's plane'. The article provided other information ... [, inter alia,] that 'according to some sources, anomalies were found in the recording. ...'

... On 1 April 2004, the Spokesman queried [the ID Director] on the substance of [the 'Le Monde'] article, which appeared to reveal pertinent details. The ID Director, in view of the fact that the substance of the article suggested a substantial knowledge of the ID inquiry, initiated a preliminary investigation within ID to ensure that there had been no leak to any unauthorized contacts with respect [to] this ongoing investigation.

... On 1 April 2004, the ID Director requested six ID staff members to identify in writing all the names of those with whom they had had discussions concerning the case. On the same date, written statements were provided by [the] ID staff members. According to [the ID Director], all revealed authorized contacts, except that of [the Applicant], who revealed unknown and unauthorized conversations with journalists and other persons. [The ID Director] said that during March 2004, [the Applicant] breached confidentiality and evidence protection by making the audio available to a French pilot, without her prior authorization or that of the lead investigator, Mr. M. G. It was also alleged that [the Applicant] had shown the French pilot the evidence, namely the CVR. It was further alleged that the discussion between [the Applicant] and the French pilot led the former to conclude that the audio had been 'doctored' ... It was inferred that the theory developed by [the Applicant] was reported in the 31 March ... article in 'Le Monde'.

... As a precautionary measure, [the ID Director] felt that [the Applicant] had to stop immediately any activity in connection with the case. On 2 April 2004, [the ID Director] called Mr. M. in Vienna and instructed him to inform [the Applicant] in New York that he should not report to work. During the course of the weekend, [the ID Director] and Mr. M. prepared a note to ... [the] Under-Secretary-General, (...) OIOS, containing their concerns about [the Applicant]'s unauthorized communications that, in their view, constituted a serious breach of one of the critical components of their functions and recommending that [he] call in [the Applicant] to give him the opportunity to explain his conduct.

... For his part, [the Applicant] tried to enter his office late on 2 April 2004 ... [h]owever ... was unable to do so. (...). No one had informed [the Applicant] that access to his office would be denied.

... On 6 April 2004, [the Applicant] sought and obtained a meeting with [the Under-Secretary-General, OIOS,] to discuss the matter. ... At that meeting, [the Under-Secretary-General] said that the purpose was to obtain [the Applicant]'s response to the allegations that he was the source of the 'Le Monde' article. [The Applicant] denied this. He told [the Under-Secretary-General] that he had [the ID Director]'s permission to make enquiries on an informal basis.

... In a memorandum [also] dated 6 April 2004, [the Under-Secretary-General] informed ... [the] Assistant Secretary-General ..., Office of Human Resources Management (OHRM), ... that [the Applicant] had admitted to having provided key evidence in the case to at least one person external to the Organization, without prior authorization. [The Under-Secretary-General] continued that in view of the sensitivity of the matter, [the Applicant] was advised to remain away from the office. Moreover, [the Under-Secretary-General] requested that [the Applicant] be placed on suspension with full pay pending completion of the investigation and that charges be brought against him for serious misconduct.

...

... In a memorandum dated 7 April 2004, the Assistant Secretary-General, OHRM, conveyed to [the Applicant] the charges against him (...). [The Applicant] was advised that he was granted two weeks to submit ... his comments on the allegations against him. He was also advised of his right to avail himself of the assistance of ... counsel. ... Finally, in the interest of the Organization and also to preserve evidence, ... [the Applicant was informed] that, in accordance with staff rule 110.2, he would be placed on suspension with pay pending further investigation and disciplinary proceedings, for a period of three months or until the completion of the disciplinary proceedings, whichever came first.

... On 8 April 2004, [the Applicant], upon his request, was granted access to his office in order to collect his personal belongings. ... [The Applicant] complained that his computer was on and had been accessed; likewise he claimed that the data stored in his Palm pilot had been deleted. ...

... In a memorandum dated 28 April 2004 ..., [the Applicant] provided his response. (...) He ... refuted the charges made against him and deemed them to be 'pure conjectures'.

... [On] ... 13 August 2004, ... [the Applicant's case was referred] to the [JDC] in New York ...”

The JDC adopted its report on 22 December 2004. The findings, conclusion and recommendations of the majority of the JDC read as follows:

“Findings

71. As to the specific charges raised in the Administration's note of 13 August 2004 to the Chairperson of the JDC:

- *On violating staff regulation 1.2 (e)*: The Panel found no evidence to support the charge that [the Applicant] acted without loyalty or did not have the Organization's interest in mind. In fact the Administration presented no evidence to show that [the Applicant] had *male fides*.
- *On the violation of staff regulation 1.2 (f)*: The majority of the Panel did not believe that [the Applicant] let his personal views adversely affect the performance of his official duties ...

The majority of the Panel noted that the contacts had been initiated in good faith with the sole purpose of assisting the investigation, and that [the Applicant] had no gains therefrom. Given the lack of evidence, the majority of the Panel therefore was of the view that the Administration had not presented a *prima facie* case of misconduct.

- *On the violation of staff regulation 1.2 (i)*: The majority of the Panel found that [the Applicant] did not disclose confidential information to any person. The majority of the Panel found no evidence that [the Applicant] revealed confidential information to any journalist either. In this connection, it was noted that the Administration had indicated that it was no longer pressing this charge.
- *On violating OIOS' confidentiality protocols*: The majority of the Panel found no evidence that [the Applicant] breached these protocols. The majority of the Panel recalled that the content of the meeting of 18 March is in dispute in view of the conflicting evidence.

VII. Conclusion and Recommendations

72. In light of the foregoing, the majority of the Panel agreed that the Administration had failed to present a *prima facie* case of misconduct. The Panel noted that the Administration had not presented a convincing case that [the Applicant's] contacts caused any damage or embarrassment to the Organization.

73. The majority of the Panel recommends that the charge against [the Applicant] in respect of staff regulation 1.2 (e) and staff regulations 1.2 (f) and (i) be dropped.

74. The majority of the Panel recommends that [the Applicant] be totally exonerated and reinstated immediately.

75. The ID Director exceeded her authority and demonstrated poor managerial judgment in failing to abide by the rules governing the suspension of staff members. The majority of the Panel thus recommends that [the Applicant] be granted three months' net [base] salary in compensation for his *de facto* and unlawful suspension that occurred when he was denied access to his office from 2 to 7 April.

...”

The findings and recommendations of the dissenting member of the JDC read as follows:

Findings

70. ...

- *On the violation staff regulation 1.2 (f)*: The Chairman is of the view that [the Applicant] did allow his personal views to adversely affect the performance of his official duties. At no stage was evidence presented to the Panel that [the Applicant] had **express** authority (as specified in ID/MGMT/03/08 of 22 July 2003) to engage with Mr. D. and others (excluding the journalists) mentioned in his note of 1 April to [the ID Director]. At best, [the Applicant] can offer only contested evidence that he had some sort of informal-informal consent obtained from the disputed 18 March 2004 conversation between himself and [the ID Director and Mr. M.]. Given the strictures of OIOS' protocols, of which [the Applicant] was aware, the Chairman must conclude that [the Applicant] violated staff regulation 1.2 (f).
- *On violation staff regulation 1.2 (i)*: The Chairman finds that the Administration has presented adequate evidence in support of its conclusions and recommendations (...) to the effect that [the Applicant] did disclose confidential information to a number of persons without **express** authority to do so. The Chairman concurs with other members of the Panel that no evidence was found that [the Applicant] disclosed confidential information to any journalist and the Administration has indicated that it is no longer pressing this charge.
- *On violating OIOS' confidentiality protocols*: The Chairman finds that the Administration has made a *prima facie* case that [the Applicant] breached these protocols by sharing information with persons (excluding the two journalists) mentioned in his note to [the ID Director] of 1 April 2004, without express authority to do so.

VII. Recommendations

72. The Chairman *recommends* that [the Applicant] be granted one month's salary to compensate him for the *de facto* but unlawful suspension that occurred when he was denied access to his office from 2 to 7 April without written notification of the charges being made against him.

73. In respect of staff regulations 1.2 (f) and (i), the Chairman finds that [the Applicant] had contact with [unauthorized] persons ...

74. Ordinarily, the Chairman would have been inclined to recommend that [the Applicant] be summarily dismissed in ... light of the serious charges arising from violating OIOS' protocols and staff regulations 1.2 (f) and (i). However, taking into account that (a) the [Applicant] had no personal stake in this matter, (b) that the events of the 18 March meeting are in dispute, (c) that [the Applicant] was trying to be helpful (albeit in an overzealous manner), and (d) that his Director (...) should have made a greater attempt in early April to establish the facts directly from [the Applicant], the Chairman *recommends* that [the Applicant] be fined the equivalent of one month's salary.”

On 24 January 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General ... accepts the JDC’s conclusion regarding the violation of your due process rights arising from your *de facto* suspension from 2 to 7 April 2004 and has decided to accept the recommendation of the JDC Chairman that you be granted one month’s salary by way of compensation. With regard to the substantive aspects of the case, the Secretary-General agrees with the dissenting opinion of the JDC Chairman that adequate evidence exists that you disclosed confidential information to a number of persons without express authority to do so, and that this constitutes misconduct within the meaning of staff rule 110.1, warranting disciplinary action. In accordance with the recommendation of the JDC Chairman, the Secretary-General has decided to impose on you the disciplinary measure of a fine in the amount of one month’s salary pursuant to staff rule 110.3 (a) (v). Moreover, it appears to the Secretary-General that your conduct in this case in allowing non-authorized persons to make wide-ranging inquiries during a confidential investigation of the utmost importance to the United Nations does not only warrant disciplinary sanction but is also indicative of gross incompetence unbecoming an OIOS Investigator of your seniority.”

Thereafter, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. On 18 March 2004, he had a brief discussion with the ID Director and Mr. M., during which he had obtained the former’s permission to approach some contacts in an “informal-informal” manner to decipher the “pilot jargon” on the tape. Having obtained permission, he proceeded to contact a flight specialist and a former French official, amongst others.
2. It is a normal procedure to ascertain information from relevant sources during the course of an investigation.
3. There were other reasons than the official charges for OIOS seeking to suspend him. In his capacity as a Staff Representative on the OIOS Review Board he was making “noises” about a series of promotions and appointments that could prove to be embarrassing to OIOS. Indeed, shortly after his suspension from service, the ID Director was promoted to the D-2 level, in apparent violation of the OIOS Promotion Guidelines. Thus, the handling of his case by OIOS in such an atmosphere, with the direct involvement of the ID Director who was both principal accuser and prosecutor, gave rise to the perception, if not the reality, of a serious conflict of interest, bias and abuse of authority.

Whereas the Respondent’s principal contentions are:

1. It is within the Secretary-General’s discretionary power to determine what behavior constitutes misconduct as well as the disciplinary measure to be imposed.
2. The Secretary-General’s decision not to follow the conclusions and recommendations of the majority of the JDC Panel but to impose a disciplinary measure on the Applicant was a proper exercise of his discretion.
3. There is no evidence of improper motive or abuse of discretion.
4. The Applicant’s request for compensation is excessive and should be denied.

The Tribunal, having deliberated from 9 to 27 July 2007, now pronounces the following Judgement:

I. The Applicant, a P-5 Investigator with OIOS, was fined one month's salary for misconduct, namely, disclosing confidential information to a number of persons without express authority to do so during an investigation to determine the origin of a "black box" (CVR) found in the Aviation Safety Unit, DPKO, in March 2004.

II. On 10 March 2004, an article was published in the French newspaper "Le Monde" alleging that the United Nations had in its possession the CVR of the Rwandese presidential aircraft, which was gunned down on 6 April 1994, killing the Presidents of Rwanda and Burundi and resulting in the Rwanda genocide. On 11 March, the Spokesman for the Secretary-General told a press briefing that the United Nations did in fact uncover a CVR and that OIOS had been requested to investigate whether this was the CVR from the downed jet. Apparently, the "black box" had been sent to the United Nations from Rwanda in 1994, but concerned officials at the time had determined that it was unlikely that it came from the downed aircraft because of its pristine condition. They were never able to ascertain its origins.

In the course of the investigation, the Applicant and a colleague, both native French speakers, were asked to listen to a recording that had been made of the "black box". They both came to the conclusion that the recording had been manipulated and that further scientific analysis was needed to determine whether the CVR was that of the Presidential plane. On 19 March, the Applicant - claiming he had received permission to conduct "informal-informal" research from the ID Director - played the audio for a French flight specialist who offered, and did, contact a number of his friends at Dassault Aviation and other persons who might be able to provide relevant information in connection with the "black box". The ID Director denied having given such permission, and, on 25 March, the Applicant was ordered to stop any activity in connection with the "black box" case.

On 31 March, another newspaper article was published in "Le Monde" revealing pertinent details of the OIOS investigation. Six staff members, including the Applicant, were asked to reveal their contacts and, unlike the others, the Applicant apparently revealed "unknown and unauthorized conversations with journalists and other persons". It was inferred that he had caused information to be leaked to the press.

On 2 April, the ID Director ordered that the Applicant be instructed not to report for work. However, the Applicant was never informed that he had been denied access to his office: he was not formally presented with charges of misconduct and placed on suspension with pay pending further investigation until 7 April. He was specifically charged with failing to comply with his obligations and the standards of conduct expected of international civil servants; violating staff regulations 1.2 (e), (f) and (i); and, breaching confidentiality under certain OIOS protocols.

On 8 April, the Applicant was granted access to his office in order to collect his personal belongings. He complained that his computer was on and had been accessed and that the data stored in his Palm pilot had been deleted. On 28 April, the Applicant refuted the charges made against him and deemed them to be "pure conjectures".

III. On 13 August 2004, the case was referred to the JDC. In its report dated 22 December, the majority of the Panel agreed that the Administration had failed to present a *prima facie* case of misconduct. The majority recommended that the charges be dropped; that the Applicant be totally exonerated and reinstated immediately; and, that he be granted three months' net base salary in compensation for his *de facto* and unlawful suspension from 2 to 7 April.

The dissenting member agreed that the suspension of the Applicant had been unlawful but was of the view that the Applicant had violated staff regulations 1.2 (f) and (i) and that he breached OIOS protocols. He recommended that the Applicant be paid one month's net base salary for the unlawful suspension, but that, equally, he be fined the equivalent of one month's salary. The Applicant was advised on 24 January 2005 that the Secretary-General had decided to follow the recommendation of the dissenting member. The Applicant filed his Application shortly thereafter.

IV. The Tribunal recalls its jurisprudence in disciplinary matters, with special attention to the Secretary-General's powers, the OIOS investigatory powers and what a *prima facie* case is. It has repeatedly ascertained the Secretary General's broad powers in disciplinary matters. In Judgement No. 583, *Djimbaye*, paragraph VI (1992), it stated: "[I]n disciplinary matters the Secretary-General has a broad power of discretion. Its exercise can only be questioned if due process has not been followed or if it is tainted by prejudice or bias or other extraneous factors."

In addition, in Judgement No. 941, *Kiwanuka* (1999), the Tribunal held that in its jurisprudence it has "consistently recognized the Secretary-General's authority to take decisions in disciplinary matters, and established its own competence to review such decisions only in certain exceptional conditions, e.g. in cases of failure to accord due process to the affected staff member before reaching a decision" and, in the same Judgement, the Tribunal emphasized "that the recommendations and conclusions of the JDC are advisory and need not be accepted by the Administration. The Respondent has the discretion to reach a different conclusion after consideration of all the facts and circumstances of the case."

V. In the present case, the Secretary-General decided not to follow the recommendation made by the majority JDC, but rather decided to accept the opinion of the dissenting member, concurring with the latter's detailed analysis of the reasons which led him to the conclusion that the Applicant's conduct amounted to misconduct within the meaning of staff rule 110.1, warranting disciplinary action. However, for the Secretary-General to take a legal decision in disciplinary matters, all guarantees of due process must have been safeguarded throughout the administrative process. It is especially important that the Administration presents a *prima facie* case of misconduct.

The Tribunal has, on many occasions, expressed its concern regarding this obligation on the part of the Administration as, in disciplinary matters, evidence is of crucial importance. It recalls its Judgement No. 1022, *Araim* (2001) in this regard, where it held, in paragraph V, that:

"The Tribunal has repeatedly stated that disciplinary proceedings are not of a criminal nature, but rather they are administrative proceedings, regulated by the internal law of the Organization. (See Judgement No. 850, *Patel* (1997).) As stated correctly by the JDC in its report, the Administration is not required to prove

its case beyond reasonable doubt. It has only to present adequate evidence in support of its conclusions and recommendations. Adequate means 'reasonably sufficient for legal action' (The Random House College Dictionary Revised edition 1982), in other words sufficient facts to permit a reasonable inference that a violation of law had occurred."

The Tribunal also recall its Judgement No. 1103, *Dilleyta* (2003), where it accepted

"that the Respondent had established before the JDC a *prima facie* case in relation to the allegations of misconduct. This did not mean that unless the Applicant established his innocence or provided some satisfactory explanation for his conduct, the JDC had to decide against him. The finding that a *prima facie* case had been made means only that the Respondent had established a case, which would entitle the JDC to conclude that the Applicant was guilty, when it accepts and is persuaded by the evidence offered as to his guilt."

VI. Under the circumstances of the case, the Tribunal is persuaded by the arguments of the majority of the JDC. It agrees with the majority of the JDC that "the Administration failed to present a *prima facie* case of misconduct", and that "the ID Director exceeded her authority and demonstrated poor managerial judgement in failing to abide by the rules governing the suspension of staff members". In fact, the record makes clear that, even if the Applicant had not followed orders when pursuing investigations that involved engaging in allegedly "unauthorized contacts" with others, there is evidence that he had at least informed his superiors about his activities and initiatives, and also that he was in continuous interaction with them. Moreover, the Administration wrongfully denied the Applicant his rights by a *de facto* suspension from 2 to 7 April 2004.

VII. As for the issue raised by the Applicant that his computer had been unlawfully searched, the Tribunal recalls again *Araim* (*ibid.*), paragraph IX:

"The Tribunal wishes to express its concern regarding the conducting of investigations by way of private intrusions into others' computers. It cannot accept that investigations could be conducted without rules and guarantees of due process and without giving due respect to inalienable rights as proclaimed by the Organization itself in the Declaration on Human Rights. This is regardless of what the internal regulations of the Organization say as to its rights to the contents of the staff's computers. This is even more troubling when considering that even OIOS, in its guidelines, is required to at least have the staff member present when retrieving evidence from their immediate vicinity, such as their desk."

In the instant case, however, the Tribunal finds that the Applicant failed to substantiate this claim.

VIII. In view of the above, the Tribunal:

1. Rescinds the decision of the Respondent, dated 24 January 2005, to impose on the Applicant the disciplinary measure of a fine in the amount of one month's salary pursuant to staff rule 110.3 (a) (v) for having violated staff regulations 1.2 (e), 1.2 (f), 1.2 (i) and OIOS protocols concerning breach of confidentiality. The Tribunal fixes the compensation to be paid to the Applicant in the amount of six months' net base salary at the rate in effect on the date of the Judgement, with interest payable at eight per

cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected, if, within thirty days of the notification of this Judgement, the Secretary-General decides, in the interest of the United Nations, not to rescind the decision which imposed a disciplinary measure;

2. Orders, in addition, as compensation for the harm suffered by the Applicant, that he be paid compensation in the amount of three months' net base salary, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,

3. Rejects all other pleas.

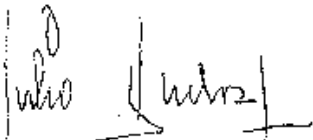
(Signatures)



Spyridon Flogaitis
President



Jacqueline R. Scott
Vice-President



Julio Barboza
Member

Geneva, 27 July 2007



Maritza Struyvenberg
Executive Secretary