



ADMINISTRATIVE TRIBUNAL

Judgement No. 1395

Case No. 1461

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Spyridon Flogaitis, President; Mr. Dayendra Sena Wijewardane, Vice-
President; Sir Bob Hepple;

Whereas, on 14 October 2005, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 January 2006, after making the necessary corrections, the Applicant filed an Application requesting the Tribunal, inter alia:

- “(i) [To order that] the Applicant be reinstated ...
- (ii) [To] order the payment of such compensation as [the Tribunal] may consider justified for the injury sustained as a result of the Applicant’s summary dismissal;
- (iii) [I]n the event that [reinstatement is not granted] ... [to] order that additional documents be produced and witnesses be heard prior to consideration of the merits of the case;
- (iv) [To] ... find that there was no basis for the extraordinary length of time during which the Applicant was placed on special leave;
- (v) ... [To compensate the Applicant] for the period she was on special leave;
- (vi) [In the] ... alternative, to ... [substitute] the Applicant’s summary dismissal with any other one of the disciplinary measures set out in [staff rule] 110.3 ... as the Tribunal shall deem appropriate;

(vii) [To order such] other relief ... as the Honourable Tribunal shall deem just.”

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 30 June 2006, and once thereafter until 1 August;

Whereas the Respondent filed his Answer on 1 August 2006;

Whereas, on 24 June 2008, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Disciplinary Committee (JDC) reads, in part, as follows:

“Employment History

... [The Applicant] was initially appointed by UNHCR on a four-month short-term appointment on 1 May 1992 as a Resettlement Clerk in the Nairobi Field Office. Her appointment was converted to fixed-term effective 1 December 1992, and she was promoted to Senior Resettlement Clerk [at the GL-5 level] effective 1 August 1994. Her appointment was changed from fixed-term to indefinite effective 1 January 2000. On 7 March 2001, she was placed on special leave with full pay (SLWFP), and on 24 June 2002, special leave without pay (SLWOP). She was summarily dismissed effective 27 September 2004.

Background

... The first allegations of corruption in refugee processing in the Nairobi Office of UNHCR surfaced in late 1999. An initial investigation having proved inconclusive, the UNHCR Inspector General (IG) undertook a more thorough investigation in September 2000; by this time the Kenya Police (KP) was also conducting an inquiry. At the request of the IG, Nairobi staff of the Office of Internal Oversight Services, Investigations Division, (OIOS/ID) were assigned to review the allegations. By mid-November 2000, the investigators and the KP had established that there were substantial allegations of corruption against four UNHCR local staff members, including [the Applicant].

... Alleged death threats made by the other three staff members [against potential witnesses] resulted in a delay in the investigation. ...”

On 7 March 2001, the Applicant was placed on SLWFP. On 19 April, the three other UNHCR staff members being investigated by OIOS and the KP were arrested by the KP and charged with various criminal offences, including extortion of funds from refugees, fraud and making death threats, all in violation of the Kenyan Penal Code.

On 14 May 2002, upon the advice of the Office of Legal Affairs (OLA), it was decided to postpone initiation of disciplinary proceedings by the United Nations, to avoid placing refugees testifying at the criminal proceedings at “serious risk”.

On 24 June 2002, the Applicant was arrested by the Kenyan police and charged under Kenyan law with cheating, fraud and making death threats. She pleaded “not guilty” to all charges. On the same day, she was placed on SLWOP, which was extended until her separation from service on 27 September 2004.

On 13 February 2003, the impediment to the pursuit of disciplinary action by UNHCR against the Applicant was removed when the High Court of Kenya overruled a lower court and “requested that the material [including the names of refugee/witnesses] be provided to the [Applicant’s] Defense Counsel”. A preliminary investigation was conducted by the IG’s Office (IGO) and, on 22 December, the Applicant was presented with charges of misconduct. Together with the charges, she received a copy of the IGO report, dated 18 June, according to which the Applicant had “repeatedly extorted money from refugees for UNHCR services, [and had] made murder threats”. On 18 January 2004, the Applicant responded to the charges of misconduct and denied all charges made against her. On 6 September 2004, the Applicant was advised by UNHCR, of the decision to summarily dismiss her.

On 22 November 2004, the Applicant lodged an appeal with the JDC in New York. The JDC adopted its report on 20 July 2005. Its considerations and conclusion read, in part, as follows:

“Considerations

11. The Panel was convinced that [the Applicant] had failed to furnish proof of improper motive or prejudice on the part of the Administration. There were, however, in the Panel’s view, two procedural irregularities. During the interview of [the Applicant] on 29 May 2003, she complained that ‘during the OIOS investigation, she felt she had been ‘interrogated’ and ‘felt humiliated’. There was no report of an OIOS interview during ‘the active KP/OIOS investigation of her activities’ in March to May 2001 in the material made available to her, nor in the material made available to the Panel. (The Panel noted that [the Applicant in Judgement No. 1394] had been interviewed and, a record made, during the ‘active investigation’ of her case.) When the Panel requested a copy of the record of interview, it was informed that there was no such record. The second possible procedural irregularity noted by the Panel concerned the length of time [the Applicant] spent on special leave. The Panel decided to revert to this matter at the end of its considerations.

12. It was clear to the Panel that the foundation on which UNHCR built its case for summary dismissal was the IGO report and its annexes. The Panel also understood that the fact that the charges against [the Applicant] were dismissed by a Kenyan court did not invalidate the [United Nations] case for summary dismissal. The Panel also understood that the standards of proof required are not the same: in the court based on common law ‘beyond a reasonable doubt,’ in a disciplinary proceeding, ‘a *prima facie* case’. However, given the practical impediments to arranging interviews by the Panel of the three witnesses listed in the IGO report, the Panel felt that the Kenyan judge’s dismissal report could be used in lieu of direct interviews in assessing ‘whether the facts on which the disciplinary measures were based have been established’ ...

13. The Panel noted that there were eight witnesses cited in the IGO report on [the Applicant in Judgement No. 1394]. As for the testimony of the three witnesses, there are discrepancies in the accounts given in the interview report and the judge’s report ... Moreover, the judge concluded: ‘There is nothing to prove that [the Applicant] received that money’. As for [one of the testimonies] it must be recalled that it comes from a witness who himself was complicit in a fraud, and who, therefore, might have had a reason to offer testimony against another person under investigation. However, [another testimony] is circumstantial and consistent in the two accounts. In the Panel’s view, despite the reservations of the judge, his testimony established that [the Applicant] took money from, at least, one refugee.

14. In addition to the witness testimony, the IGO report based its conclusion in part on the finding that ‘[the Applicant] could not provide any coherent or credible statement to explain why there were so many irregularities in her processing of the file of [an] applicant ...’

...

15. Members of the Panel were struck by the lack of substance in [the Applicant's defence]. As remarked during the discussions, it lacked even statements of 'character witnesses,' such as one of her former supervisors or of [the] Field Safety Advisor for UNHCR, Kenya, to whom she had reported an earlier alleged case of corruption. This weakness was to some degree offset by the Panel's own considerations which ... sought to test the Administration's case. The Panel was, nevertheless, convinced that [the Applicant] had failed to disprove the charges against her; to the contrary, the Panel was convinced that she had accepted a bribe from, at least, one refugee.

16. The Panel then turned to consider what had struck it, at the initial stage of its review, as the extraordinary length of time (over three years) during which [the Applicant] was on special leave. Having considered the evolution of the case for dismissal ..., the Panel was convinced that the delay, although regrettable, was justifiable, given the allegations of death threats and the possible danger of harm to, or intimidation of, the witnesses. In this connection, the Panel took note of the OLA recommendation in a memo of 14 May 2002 (following on a strong recommendation from OIOS in a memo of 1 November 2001) that UNHCR suspend disciplinary proceedings for the safety of witnesses and to aid in a successful prosecution of the UNHCR staff members charged in the Kenyan courts. OLA finally gave the go-ahead for the disciplinary cases in a memo of 14 November 2003. The Panel concluded that the length of the special leave, as well as the other procedural irregularity noted in paragraph 11, above, did not constitute violations of her due process rights, which were scrupulously observed.

Conclusion

17. Having completed its review of the case, the Panel found no reason to recommend a change in the decision of the Secretary-General."

On 22 July 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed her that the Secretary-General agreed with the JDC's conclusions and, in accordance with its unanimous recommendation, had decided to take no further action on her case.

On 25 January 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. She was denied her due process rights.
2. The decision to summarily dismiss her was based on inconclusive evidence.
3. The Administration had not presented a *prima facie* case against her.
4. The Administration should have accepted the acquittal from criminal charges by the Kenyan courts and, thus, invalidated its decision to summarily dismiss her.

Whereas the Respondent's principal contentions are:

1. The decision to summarily dismiss the Applicant was a valid exercise of the Secretary-General's discretionary authority.
2. The Applicant's due process rights were not violated.
3. The outcome of the Applicant's criminal charges in the Kenyan courts is not binding on the Secretary-General in the exercise of his discretionary disciplinary authority.

The Tribunal, having deliberated from 24 June to 25 July 2008, now pronounces the following Judgement:

I. The Applicant was initially appointed by UNHCR on a four-month short-term appointment on 1 May 1992 as a Resettlement Clerk in the Nairobi Field Office. Her appointment was converted to fixed-term on 1 December 1992 and she was promoted to Senior Resettlement Clerk effective 1 August 1994. She was granted an indefinite appointment on 1 January 2000.

After allegations of corruption surfaced in late 1999, and a first inconclusive investigation, the IG conducted a more thorough investigation with the assistance of the KP. On 7 March 2001, the Applicant was placed on SLWFP in connection with the ongoing OIOS investigation and, on 24 June 2002, SLWOP.

On 19 April 2001, the three other staff members, who were charged with issuing death threats, were arrested. All four staff members, including the Applicant, were charged under the Kenya Penal Code with fraud, extortion of monies from refugees and making death threats against refugees who filed complaints.

Based on information provided by the KP and OIOS, the IGO produced a preliminary investigation report concluding that “the IGO considers that the corruption and threat allegations by [the Applicant] were established”.

Subsequently, on 27 September 2004, the Applicant was notified that she was summarily dismissed from service on the grounds of “repeatedly extorting refugees for services which were free of charge, and making murder threats”.

On 22 November 2004, the Applicant requested that the JDC review the decision to summarily dismiss her from service. On 20 July 2005, the JDC saw no reason to recommend a change in the decision of the Secretary-General to summarily dismiss the Applicant. On 22 July, the Secretary-General agreed with the JDC’s findings and conclusions.

On 25 January 2006, the Applicant filed her Application with the Tribunal.

II. The Tribunal recalls that this case shares factual and legal similarities with other cases brought to its attention. One of these cases, Judgement No. 1394 was reviewed during the Tribunal’s present session, and Judgement No. 1357, was rendered during its fall 2007 session. In Judgement No. 1357, the Tribunal, assisted by a very carefully written JDC Report, was led to decide that:

“The Tribunal finds no basis for disputing the findings of the JDC. It is impressed with the careful and thorough way in which the panel considered the facts and the legal issues, and the Tribunal agrees with the conclusions reached by the JDC. Therefore, the Tribunal finds that the summary dismissal of the Applicant was both appropriate and proportionate to his conduct.” (para. IV)

The Tribunal does not find the JDC Report in the present case to be of the same quality as that in Judgement No. 1357. However, mindful of the facts from the JDC report and its own findings in

Judgement No. 1357, the Tribunal needs only to examine outstanding issues which are pertinent to this particular Application.

III. The Tribunal turns now to the issue of the Applicant's suspension without pay, pending disciplinary proceedings. It recalls in this regard its Judgement No. 1357 (*ibid.*).

The provisions of staff rule 110.2 govern suspension during investigation and disciplinary proceedings in the following terms:

- “(a) If a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during the investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. Such suspension shall be with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. The suspension shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.
- (b) A staff member suspended pursuant to paragraph (a) shall be given a written statement of the reason for the suspension and its probable duration.
- (c) If a suspension pursuant to paragraph (a) is without pay and the charge of misconduct is subsequently not sustained, any salary withheld shall be restored.”

Administrative instruction ST/AI/371, dated 2 August 1991, entitled “Revised Disciplinary Measures and Procedures”, further provides that “[a]s a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible”.

IV. In Judgement No. 1182, *Njuki* (2004) para. III, the Tribunal held:

“The Tribunal is of the opinion that the Staff Regulations and Rules provided this period of 90 days having considered it to normally be sufficient time in which to conduct and conclude an investigation into allegations which are serious enough in nature so as to warrant suspension from duty. Furthermore, it was envisaged that such suspension from duty would normally be with pay.”

However, the Tribunal has upheld the Administration's decision to suspend a staff member without pay in exceptional circumstances, albeit noting that the “decision to suspend a staff member without pay is a harsh measure”. (See Judgement No. 994, *Okuome* (2001).) In Judgement No. 941, *Kiwanuka* (1999) para XII, the Tribunal held:

“The Tribunal is of the view that, in accordance with the Staff Rules, as well as fundamental principles of fairness, an accused staff member should be paid unless there is proof of exceptional circumstances. The discretionary authority of the Respondent to suspend without pay in exceptional circumstances is not absolute and must function within the requirements of due process and the pertinent rules and regulations (Judgement No. 388, *Moser* (1987)).”

The Tribunal has also upheld the Administration's discretion to exceed the period of three months provided for in staff rule 110.2 (a), finding that "[a]lthough staff rule 110.2(a) speaks in terms of suspensions 'normally' not exceeding three months, it is plain that a suspension may be for a longer period if the nature of the investigation so requires". (See Judgement No. 615, *Leo* (1993).) However, the Tribunal "has emphasized the significance of the Respondent's providing a reason when extending the suspension for more than three months. (Cf. Judgement No. 4, *Howrani* (1951).)" (See Judgement No. 987, *Edongo* (2000).)

In *Edongo* (ibid.), the Tribunal addressed the Applicant's claims that the Respondent's decisions to suspend him for a total of five months, with pay, "were procedurally irregular since the Respondent failed to establish the requisite grounds necessary to impose a suspension under staff rule 110.2 and ST/AI/371". The Tribunal dismissed the Applicant's contention "that the Administration failed to demonstrate or inform him of the reasons for the extended suspension", finding

"[t]he record does indicate that the Applicant was informed that the reasons for the extended suspensions were not only based on the fear that if the Applicant was at the workplace there was a risk of evidence being destroyed or concealed but also that additional time was required to complete the investigation." (para. IX)

The Tribunal concluded in *Edongo*, that

"the Respondent did not take excessive time in carrying out its investigation, which included seeking and obtaining the necessary responses from the appropriate parties and deliberating thereon. It is clear that the five-month suspension of the Applicant was not undue and irregular and was warranted in the circumstances." (para IX)

Similarly, in Judgement No. 1175, *Ikegame* (2004), the Tribunal disagreed with a conclusion of the JDC that the Applicant's 13 month suspension with pay was unwarranted, in the following terms:

"The Tribunal notes that at the time of the suspension, the Applicant had already admitted her alteration of [a] cheque ... This was reason enough for the Respondent to be concerned about allowing the Applicant to encumber the D-1 post to which she had recently been promoted, as the Applicant would be in a position of leadership and responsibility. In that position, her admitted forgery was sufficient reason to have shaken the Respondent's confidence in her ability to comport herself with the honesty and integrity expected of all United Nations staff members and particularly of such a high ranking staff member. Although the Tribunal notes that while the 13 month suspension was significantly longer than the three months normally intended under staff rule 110.2, *the Applicant suffered no financial harm as a result*. While the Tribunal recognizes that the Applicant may have been stigmatized by such a lengthy suspension, it notes that her improper conduct – the alteration of the cheque, which she admits – was the basis for the suspension, and having chosen to alter the cheque in violation of the United Nations standards, rules and regulations, the Applicant cannot be heard to complain about the foreseeable consequences, which included suspension." (Emphasis added.) (para. X)

V. In both *Edongo* and *Ikegame*, however, the Applicants were suspended with pay. Where a staff member is suspended without pay, the Tribunal has critically scrutinized both the decision and the duration of the suspension.

In *Kiwanuka* (*ibid.*), the Applicant was initially suspended without pay on 1 July 1996. In April 1997, his suspension was converted to suspension with pay, retroactive to 1 December 1996. He was thus ultimately suspended without pay for a period of five months. The Tribunal found that

“the Respondent’s decision to suspend the Applicant’s salary for an extended period of time was unjustified. The qualifying factors surrounding the investigation made it clear that there were no circumstances which could be categorized as exceptional. The Respondent failed to take measures expeditiously to resolve the matter. The Applicant’s continued suspension from duty without pay was unnecessary. As a result, the Applicant was denied his right to due process.” (para. XII)

Whilst the Tribunal in *Kiwanuka* upheld the Respondent’s decision to summarily dismiss the Applicant for serious misconduct, it found that his “unjustifiably prolonged suspension of duty without pay ... amounted to a denial of due process”, for which it awarded compensation of six months’ net base salary.

Equally, in *Okuome* (*ibid.*), the Tribunal concluded that as “the Applicant failed to meet the highest standards of integrity required by a staff member and ... his conduct constituted serious misconduct”, “the Secretary-General did not violate [his] due process rights by summarily dismissing him”. However, the Tribunal awarded the Applicant compensation of three months’ net base salary “in light of the Respondent’s prolonged delay in concluding the disciplinary proceedings while keeping the Applicant suspended without pay”. In that case, the Applicant was suspended with full pay until 3 May 1995, the date on which he was charged with misconduct, from which date onwards he was suspended without pay until 11 April 1996, when he was summarily dismissed; a period slightly in excess of eleven months. According to the Tribunal:

“While the Tribunal finds that the allegations of serious misconduct warranted a thorough investigation, and notes that the findings of the audit investigation led to the suspension of 25 staff members in addition to the Applicant, it finds that the time taken to complete the disciplinary proceedings was exaggerated and unduly prolonged. The fact that 25 other staff members were involved does not justify keeping the Applicant without means of support for such a lengthy period of time.” (See *Okuome* para. VI (*ibid.*)).

Finally, in *Njuki* (*ibid.*), the Tribunal criticised the Applicant’s suspension without pay for a period of almost one year, finding:

“In the present case ... the Applicant was suspended from duty, without pay, for a period far exceeding that which is provided in staff rule 110.2(a). The Respondent submitted no explanation why such a prolonged period was required. The Tribunal believes that the 90 day period specified in staff rule 110.2(a) cannot be extended arbitrarily or without good reason, especially when the staff member is placed on suspension from duty without pay. Furthermore, the Administration’s motives for any such extension are subject to consideration and scrutiny by the Tribunal.” (para. III)

The Tribunal upheld the Applicant's substantive claims and also awarded him "compensation equivalent to all salary and allowances to which he would have been entitled, for the entire period less the 90 days stipulated in staff rule 110.2 (a) during which [he] was suspended without pay".

VI. In the present case, as in Judgement No. 1357 (*ibid.*), the Applicant was placed on SLWFP pending investigation of her case, on 7 March 2001. The SLWFP was extended until 24 June 2002, from which point she was suspended without pay until her separation from service on 27 September 2004. While the Tribunal has upheld suspension without pay, and suspension in excess of ninety days, as discussed above, it finds it intolerable for a staff member to be suspended without pay for a period in excess of three years. The financial implications of such an extended suspension are extremely severe, even if, as foreseen by staff rule 110.2 (c), the charges against a staff member are not sustained and his or her withheld salary is restored. It is virtually impossible to recreate the financial situation a staff member would have been in had such suspension not taken place. In the Applicant's case, of course, staff rule 110.2 (c) is not relevant as she was not exonerated. She was left, however, without the means to support herself and unable to clear her name for an unacceptably lengthy period.

VII. When the Applicant was initially informed that she was being suspended without pay, the then Head, Human Resources Service, UNHCR, wrote to her as follows:

"OIOS has informed me that you have been charged before the Chief Magistrate with several offences, namely cheating several refugees and conspiracy to threaten to kill three of your colleagues and two officials of the United States Embassy in Nairobi, including the US Ambassador.

The conduct described in the charges appears to be of such a nature and gravity that your suspension from service is warranted. There is a danger to other staff members and a risk that evidence will be concealed or destroyed.

For the foregoing reasons, I have decided to suspend you for an initial period of two month in accordance with staff rule 110.2 (a). Your suspension shall be without pay in view of the exceptional circumstances of this case. ..."

Thereafter, the ongoing need for the Applicant's suspension was never explained or elaborated upon. The Applicant was regularly advised that her suspension was being continued, but the letters contained nothing more than the following pro forma statement:

"Dear [Applicant],

Further to my letter dated ..., please be advised that your suspension without pay is extended for a further period of two months.

In view of the sensitive content of the present letter, I have asked that it be hand-delivered to you and that you be requested to acknowledge receipt in writing.

Yours sincerely,
[Head, Human Resources Service, UNHCR]”

These mere iterations of the extension of the Applicant’s suspension cannot be considered to provide the reasoning required to justify prolonged suspension, per *Howrani* (ibid.) and *Edongo* (ibid.).

VIII. Finally, it would appear that UNHCR found the repeated extensions of the Applicant’s suspension a bureaucratic irritation as, on 16 January 2003, the UNHCR Representative in Kenya sent the following memorandum to the Director of Human Resources Management at UNHCR Headquarters in Geneva:

“...

5. The other issue concerns how the suspensions have been handled thus far. As you know, originally, they were effected valid on each occasion for two months. At the end of each period the suspensions would be extended again a process involving email reminders to Headquarters, letters from HQs to be personally handed to and signed by the staff concerned, etc. On the latest extensions, the suspensions were for the first time extended for a period of three months. The whole process, it has to be said, is extremely cumbersome. Especially since the cases are likely to drag on even through to the end of this year, our suggestion is that the suspensions should be made effective to 31 December 2003. Obviously, should there, in the mean time, be crucial developments relevant to the duration of the suspensions, they would be altered accordingly.

...”

Thereafter, the Applicant’s suspension was extended, in one personnel action, from 27 January until 31 December 2003, a period of almost one year, or four times the period envisaged in staff rule 110.2. The Tribunal notes that when that extension expired, no action was taken until after the Applicant had been summarily dismissed. On 1 November 2004, her suspension without pay was retroactively extended from 1 January until 27 September 2004, the date of her dismissal.

As in Judgement No. 1357, the Tribunal must register its extreme concern at such a lackadaisical and even callous attitude towards procedure, the staff rules and the rights of the Applicant. Far from being concerned with the fact that one of their staff members had been suspended without pay for a lengthy period, UNHCR was apparently more concerned with the burdensome nature of the paperwork process required to maintain the Applicant’s suspension without pay.

IX. The JDC found that the Applicant’s suspension, “while regrettable”, was “justifiable”. The Tribunal cannot agree: suspension without pay for such an extended period of time is not acceptable. Staff members, even those accused of criminal acts, are entitled to due process and, if the proceedings against them cannot be - or are not - concluded in a timely fashion, the Organization should normally bear the financial consequences of such delay.

Moreover, the Respondent’s assertion that disciplinary proceedings could not be undertaken against the Applicant because the Administration did not want to disclose witness identities pending

criminal proceedings is not supported by the jurisprudence of the Tribunal, which held in Judgement No. 983, *Idriss* (2000) that, under extreme circumstances, witness identities may be kept confidential:

“IX. When substantial grounds exist for believing that the disclosure of witnesses' identities would endanger them, the Tribunal finds that it is reasonable to protect the anonymity of such witnesses, provided that in so doing, the person accused would still have sufficient information to address meaningfully the allegations made against him. Obviously there are cases in which it is essential for the accused person to know the source of the allegations against him in order to enable him to challenge the honesty, reputation or reliability of a witness. There are also cases in which a witness must be identified so as to afford "due process" to a person with an alibi or a similar defence. In such cases the Tribunal is satisfied that the rights of an accused person to a fair hearing are superior to those of a person seeking anonymity. Under those circumstances the matter should not proceed unless there is disclosure of the identity of the accuser or witness as the case may be.

X. The Tribunal is satisfied that no such circumstances, as outlined above, are apparent here. The accused was afforded a proper and reasonable opportunity to deal with the charges of misconduct in the course of the investigation ..., notwithstanding that certain of the names of the witnesses were withheld from him and notwithstanding that he was given limited 'extracts' from testimony rather than the full unedited records.”

Furthermore, on 13 February 2003, when the Kenya High Court informed the UNHCR that it overruled its lower court's objection to the disclosure of the identity of the witnesses to the Applicant's counsel, and on 18 March 2003, when the Attorney General of Kenya informed the UNHCR that it could proceed with its administrative and disciplinary proceedings against the Applicant, there was no reason why disciplinary proceedings could not have commenced immediately. The Tribunal notes that the investigation and preliminary stages could have been completed in the interim.

Accordingly, the Tribunal, mindful of the jurisprudence it has considered in paragraph V above, and considering its findings in Judgement No. 1357, awards the Applicant compensation.

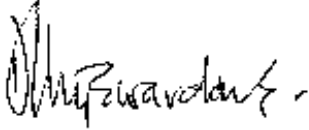
X. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay to the Applicant, by way of compensation, US\$ 25,000 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,
2. Rejects all other pleas.

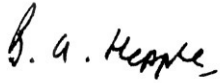
(Signatures)



Spyridon Flogaitis
President

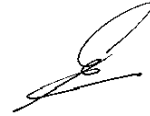


Dayendra Sena Wijewardane
Vice-President



Bob Hepple
Member

Geneva, 25 July 2008



Maritza Struyvenberg
Executive Secretary