



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1455

Case No. 1536

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Brigitte Stern; Mr. Augustín Gordillo;

Whereas at the request of a former staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 15 March 2007, and once thereafter until 30 April 2007;

Whereas, on 18 April 2007, the Applicant filed an Application containing pleas, which read, in part, as follows:

“... REQUESTS THE TRIBUNAL TO:

...

ORDER the Respondent to reinstate the Applicant retroactively to 17 March 2005, with all his rights, allowances and pension fund adjustments and with payment of appropriate compensation for the ill-treatment and injury sustained;

ORDER the Respondent, failing the Applicant's reinstatement, to make him an exceptional payment, pursuant to article 9.1 of the Statute of the Tribunal, of three years' net salary in compensation for the serious procedural violations committed during the proceedings leading to his summary dismissal, and for the serious damage to his professional reputation resulting from the false testimony and the failure to complete investigations which were conducted in an unprofessional and biased manner;

ORDER the Respondent, on an exceptional basis and by reason of the complexity of this case of unproven sexual abuse, to make a payment of \$20,000 in respect of the fees and expenses of the Applicant's Counsel;

RECOMMEND to the Secretary-General that any compensation paid in this case should be recovered from the staff members guilty of serious negligence in MONUC and OHRM, pursuant to rule 112.3 of the Staff Rules.

..."

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 8 November 2007, and once thereafter until 10 December 2007;

Whereas the Respondent filed his Answer on 10 December 2007;

Whereas the Applicant filed Written Observations on 28 January 2008;

Whereas the Applicant filed an additional communication on 30 June 2009;

Whereas, on 7 July 2009, 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:

“Staff member’s employment history

... The staff member entered the service of the United Nations in New York on 10 September 1985, as a G-2 Mimeograph Operator in the Department of Conference Services, Publishing Division, Reproduction Section, on a short-term contract ending on 20 December 1985.

... On 10 August 1987, the staff member was reappointed to the same post, at the same grade, on a short-term contract ending on 30 December 1987. That contract was renewed several times until, on 10 February 1988, the staff member was offered a fixed-term contract for the same post at the same grade.

... The fixed-term contract was extended on 1 April 1988 and the staff member's job title was changed to 'Clerk'. In September 1989, he was promoted to the G-3 level and his job title became 'Inventory and Supply Clerk, Conference Services, Publishing Division, Distribution Section'. This fixed-term contract was renewed several times until, on 1 January 1992, it was converted to a probationary appointment for the same post at the same grade.

... On 1 September 1992, the staff member was offered a permanent contract for the same post at the same grade.

... On 30 June 1994, he was promoted to the G-4 level.

... On 23 March 2000, he was temporarily posted to the United Nations Organization Mission in the Democratic Republic of the Congo (hereinafter referred to as 'MONUC'), Department of Peacekeeping Operations [(DPKO)], as a G-4 Supply Assistant. The file indicates that he was also appointed Officer-in-Charge of the General Services Section. His assignment to MONUC was extended several times, most recently from 1 July 2004 to 31 December 2004. The staff member was therefore due to return to New York at the end of December 2004.

... However, as a result of the investigation under way, which forms the subject of this case, the staff member was suspended from duty with full pay as of 19 November 2004, and left the Democratic Republic of the Congo in order to return home to the United States of America. He had already been asked to leave Kisangani (his duty station in the Democratic Republic of the Congo) for Kinshasa on 29 October 2004. On 23 February 2005, his suspension was extended, but this time without pay.

... While still on suspension, the staff member was summarily dismissed on 18 March 2005. This report addresses that summary dismissal, which was contested by the staff member.

... The most recent periodic evaluation in the staff member's personnel file covers the period from April 1998 to March 1999, i.e. before his assignment to MONUC, and indicates that he frequently exceeded performance expectations.

Summary of the facts

... On 16 December 2002, by means of internal administrative circular No. 2002/020, a Code of Conduct strictly prohibiting any act of sexual abuse and/or exploitation by members of MONUC — civilian or military — and classifying such acts as serious misconduct was introduced at MONUC. The circular defined an act of sexual abuse and/or exploitation as:

... 'Any exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour. The public solicitation of any such act shall be considered as an aggravating circumstance;

... Any sexual activity with a person under the age of 18. The mistaken belief in the age of the person cannot be considered as a defence. This provision shall not apply to national staff of MONUC involved in a bona fide relationship in respect of the Congolese national law and customs; and/or

... Any other sexual misconduct that has a detrimental effect on the image, credibility, impartiality or integrity of the United Nations'.

... The circular recalled that all MONUC personnel were required to 'act with the utmost integrity and behave in an exemplary manner, both in the performance of their official duties and in their private lives', and stipulated that 'the presence of MONUC personnel in bars, nightclubs or other places where services of prostitutes are available or acts of sexual abuse and/or exploitation take place as the sole activity is prohibited'. Heads of department were authorized to designate such establishments as 'out of bounds'. According to the circular, any breach of its provisions could lead to disciplinary measures, 'including termination and, where necessary, immediate repatriation, in accordance with the administrative rules and regulations of the United Nations'. At this juncture, it should be pointed out that, when the circular was issued, the staff member had been in his post at MONUC for two and a half years.

... On 15 October 2003, the Secretary-General's bulletin ST/SGB/2003/13, entitled 'Special measures for protection from sexual exploitation and sexual abuse', was promulgated. That bulletin was issued following the adoption, on 15 April 2003, of General Assembly resolution 57/306 on the investigation into sexual exploitation of refugees by aid workers in West Africa. A document entitled 'Acknowledgement of Receipt Form', signed by [the Applicant] on 31 October 2003 and included in the file, confirms that he had received the bulletin and was therefore aware of its contents.

... On 15 April 2004, a Personnel Conduct Officer [the PCO] ... was posted to MONUC-Kinshasa in order to strengthen the Mission's disciplinary procedures. ... [Her] terms of reference included the implementation of the aforementioned Secretary-General's bulletin ST/SGB/2003/13 on protection from sexual exploitation and sexual abuse. [The] arrival [of the PCO] coincided with

the publication in the British newspaper *The Independent* of an article ... alleging that MONUC Blue Helmets were involved in cases of sexual exploitation and abuse of young Congolese girls, some of them minors, in the camp for internally displaced persons in Bunia. The Special Representative of the Secretary-General for MONUC (hereinafter referred to as the 'SRSG') immediately dispatched [the PCO] to Bunia to assess the situation. Following her report to him, which detailed 24 allegations against military and civilian personnel in Bunia, the SRSG ordered, according to [the PCO] 'a special emergency month-long rapid response pilot project. The project consisted of ad-hoc investigative and prevention teams, as well as a public information campaign and special expedited procedures for disciplinary mechanisms that would allow the SRSG to remove suspects from the mission area pending investigation. At the same time, the SRSG and the Under-Secretary-General for Peacekeeping Operations requested the United Nations Office of Internal Oversight Services (OIOS) to undertake a full investigation'.

... In fact, an OIOS investigation team was sent to Bunia and worked there from June to September 2004. According to the note drafted by [the PCO] at the end of her assignment, 'the OIOS team worked independently of MONUC, although several MONUC personnel were seconded to OIOS to assist in the four month-long investigation that lasted from May to September 2004. In the meantime, the [the PCO] received increasing numbers of reports of incidents of sexual exploitation and abuse in other parts of the mission. Working with the ad hoc investigative teams composed of Civilian Police, Military Police and civilian staff, and in conjunction with the Child Protection and Security section, the [the PCO] conducted preliminary assessments of those reports. However, the assessments were hampered by limited time, resources and logistical means'.

... In July 2004, [Mr. O.] joined the MONUC office in Kisangani as a Child Protection Officer, under the supervision of [Ms. B.], who was herself based in Kinshasa.

... During that same period, i.e. in July 2004, ... [the] Permanent Representative of Jordan ... was appointed Adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel.

... According to a document entitled 'Permis d'exploitation' (business licence), supplied for the file by the staff member, on 6 August 2004 [Ms. B.-M.] submitted to the Ministry of the Environment, Fisheries and Forests of the Democratic Republic of the Congo an application to open 'a fashion boutique, hair salon and other activities on Avenue Général Mulamba No. ..., in the village of Makiso, Kis.' The licence was issued to [Ms. B.-M.] on 11 August 2004, and it bore a note to the effect that the establishment must open by 22 August 2004 at the latest. According to [Ms. B.-M.], she opened the shop, called 'Janic Mode' ... in August 2004. ... [Ms. B.-M.] explained that the clothes sold in her boutique came from Kampala, Uganda, thanks to her husband, a student living in Kampala with one of her two children. Furthermore, her sister, who had remained in Kinshasa, had kept the merchandise from the boutique that [Ms. B.-M.] had owned there before moving to Kisangani. According to [Ms. B.-M.], she had only one employee, César, who managed 'Janic Mode' and whom she paid \$20 a month. She also said that she had employed a hairdresser, Jeanne, whom she had paid \$10 but 'who was lazy' and eventually left. [Ms. B.-M.] stated that the operating costs of the business amounted to \$50 per month (rent, electricity, water) and that she had paid an initial security deposit of \$180. Her shop also had a small terrace where refreshments were served to customers. She therefore owned a refrigerator, which could hold two 24-bottle cases of drinks (soft drinks, cola, beer). Those drinks generally sold out in one to three days, at which point she would purchase more. [Ms. B.-M.] consistently denied that her boutique was frequented by prostitutes.

... On 26 August 2004, [Mr. W.], Chief Security Officer at MONUC-Kinshasa, asked [Mr. P.], Security Investigator at MONUC-Kisangani, to conduct an investigation into prostitution in Kisangani. He sent him an e-mail — copied to [Ms. B.] (Child Protection, MONUC-Kinshasa) and to [the PCO] — which read: '... We have detected the presence of underaged girls, probably working as prostitutes, in a hotel in Kisangani. I will ask my Investigator in Kisangani to dive into

this, and to do for the best. Maybe, you could support him, in this investigation? ... I think that this case should be taken very seriously, particularly if underaged girls are involved. We must be RUTHLESS with those who are benefiting from it. Do your best, and if others can help you ... that would be great. Keep me abreast of your activities, discreetly, of course. I know that it will be difficult to uncover the truth ... Good luck!!'. [the PCO] answered that e-mail on the same day, requesting that 'sexual exploitation and abuse allegations be sent to my office so that we can have a coordinated approach to the investigation. ... I have just assembled a 'Rapid Response' investigation team to go out east. We will be looking at allegations in Goma, Bukavu and Uvira, and I have proposed that we also look at these allegations in Kisangani'. According to [Mr. P.], the request for an investigation was not unexpected, since he had already conducted investigations into such matters on previous occasions in Kisangani, but there had been no follow-up. The issue of prostitution had, in fact, been raised many times during internal MONUC meetings in Kisangani.

... Following the request sent by [Mr. W.], [Mr. P.] organized a meeting at MONUC-Kisangani, attended by [Mr. D. B.] — who was at that time, in the absence of [Mr. K.] (Head of the Regional Office in Kisangani), in charge of the Kisangani office — [Mr. O.], Child Protection Officer, and [Mr. E.], Human Rights Officer, in order to make arrangements for the investigation. Following that meeting, it was decided to put Kisangani's main prostitution hubs under surveillance, but individual names were not mentioned. According to [Mr. P.], the establishments targeted had already been strictly off limits to MONUC personnel for quite some time. To carry out the aforementioned surveillance, [Mr. P.] used local staff ... to monitor, in particular, the Hôtel des Chutes, the Zambeke and the Hôtel Agunia, the first two establishments being, according to [Mr. P.], the most significant locations for prostitution in the city. 'Le Janic' was not on the list. The guards said that [Mr. P.] did not pay them for their services, but [one of them] said that, once or twice, the latter had given them \$5 to buy a phone card to use for the investigation, and that he had 'promised them [that they would be] rewarded at the end'. However, [Mr. P.] stated that he did not show any favouritism towards the guards participating in the investigation. He also denied having paid the witnesses.

... For his part, the staff member states that he returned from leave on 28 August 2004 and paid a visit to 'Le Janic' that same day in order to congratulate [Ms. B.-M.] on the opening of her business. It should be pointed out at this juncture that [Ms. B.-M.] and the staff member knew one another. During the period in question, [Ms. B.-M.], a Congolese national, was employed as a daily worker by the MONUC Security Section in Kisangani, under the supervision of [Mr. G.], Chief Security Officer. According to [Ms. B.-M.], the staff member had helped her find the job with MONUC, having recommended her to [Mr. G.], who eventually took her on as a daily worker in April 2004. She said that she had met the staff member in April at the restaurant where she then worked, and that she had taken that opportunity to ask him for a job. With regard to her relationship with the staff member, [Ms. B.-M.] has always maintained that they were merely friends and that she did not live with him. She has, however, confirmed that she went to [the Applicant's] house several times to deliver food or clothing that he had ordered from her. She thus maintains that she never attended parties at [the Applicant's] house. She also denied having been taken to work in vehicles driven by [the Applicant] or his drivers; according to her, she travelled to work by bus or bicycle.

... The brothel surveillance operation organized by [Mr. P.] ... seems to have taken place between the end of August and the beginning of September 2004 and to have lasted for about 10 days. According to the individual observation sheets completed by the security guards, the Hôtel des Chutes was under observation on 30 and 31 August and 1 and 2 September 2004, while the Zambeke was under observation on 1 September 2004. At that point 'names began to be mentioned: [the Applicant] had been seen at the Hôtel des Chutes, [Mr. G.] was well known in areas frequented by prostitutes'. Thus, according to [Mr. P.], his security guards passed on to him, along with other allegations against, for the most part, military personnel, information suggesting that the staff member managed a bar called 'Le Janic' which served as a meeting point for

prostitutes from the Hôtel des Chutes and the Zambeke and MONUC personnel. The bar had allegedly been opened in the name of his girlfriend ... whose own history was somewhat dubious.

... On the basis of the information gathered, [Mr. P.] asked the guards to concentrate solely on civilian, rather than military, MONUC personnel. More specifically, the individuals targeted were [Mr. G.], [Mr. E.] and the staff member ... [T]he results of the surveillance operations were often presented orally, in order to avoid leaving a paper trail which 'could cause problems'. With regard to the information gathered about the staff member, the security guards hired by [Mr. P.] ... stated that they knew [Ms. B.-M.] well because she worked with them in the Security Section. She very often talked to them about her relationship with the staff member, which was of an intimate nature. [Ms. B.-M.] allegedly told them that she and the staff member had opened 'Le Janic' ... and that he was assisting her financially. However, [Ms. B.-M.] was the owner, the 'number one'. The guards also stated that they had occasionally seen the staff member's drivers ... taking drinks to 'Le Janic' in United Nations vehicles and that vehicle No. UN-0111 was often parked in front of the establishment. They also said that prostitutes visited 'Le Janic', along with a very diverse range of clients ('everyone').

... Meanwhile, during the surveillance operation, [Mr. G.] (Chief Security Officer, MONUC-Kisangani) returned from leave on 8 September 2004 and was briefed on the investigation by [Mr. P.]. According to the latter, [Mr. G.] was 'very angry', and, the following day, 9 September 2004, he called a meeting with Security Section staff during which he accused [Mr. P.] of having had him, as well as the staff member, who had apparently complained, followed. [Mr. P.] reported the incident to [Mr. W.] (Chief Security Officer, MONUC-Kinshasa) and to [Mr. K.] (Head of Office, MONUC-Kisangani). In fact, [Mr. P.] was keeping [Mr. W.] — who had instructed him to carry out the surveillance operation — informed about all his activities, but maintains that he never gave [Mr. W.] a proper report. In light of [Mr. G.'s] reaction, and of the outcome of the surveillance operation, which appeared to show that MONUC civilian personnel — and in particular his own boss, [Mr. G.] — were involved in activities that might fall within the scope of the ban on sexual abuse and exploitation, [Mr. P.] no longer wished to be involved in the investigation. Since [the PCO] was in Kisangani on that day, he took advantage of her presence to brief her about the situation. She reportedly told him to 'go and see OIOS to talk about the problem' and also referred to [Mr. W.].

... On an unspecified date, [Mr. P.] therefore took the information in his possession to the OIOS team which was at that time in Bunia. He indicated to the team that a proper investigation was needed to substantiate the allegations made by the guards he had contracted. He stated that he had not conducted an 'in-depth investigation' but merely an 'overview of prostitution in Kisangani'. In particular, he had never visited 'Le Janic' himself. [Mr. P.] said that, after having given the information in his possession to OIOS, he had terminated all surveillance operations but he and his security guards ... had received threats. He also stated that he had been very surprised that an investigation team had not been sent to Kisangani immediately to deal with the allegations he had communicated after his visit to Bunia.

... It turns out that one of the people whom [Mr. P.] had met at the OIOS offices in Bunia was [Ms. N.], Civilian Police Officer [(CIVPOL)] and Focal Point for human rights, child protection, and gender and HIV/AIDS issues. She had been sent to OIOS to assist in the sexual exploitation and abuse investigations that OIOS was conducting at the time in Bunia ... According to [Ms. N.], she was then instructed by the SRSG, through [the PCO], and by ... the Chief of the Civilian Police, to go to Kisangani to verify, as a 'neutral' party, the allegations received before an official investigation was opened.

... [Ms. N.] accordingly carried out her inquiry in Kisangani from 15 to 17 September 2004, with guidance from a local contact working for the Office of the United Nations Security Coordinator [(UNSECOORD)], who showed her places of prostitution, which she visited on two nights between the hours of 7 p.m. and 1.30 a.m. She also met with the security guards who had

been involved in the surveillance operation launched by [Mr. P.] and reportedly recommended that they should go to nightclubs and question prostitutes to find out who their clients were.

... Following her mission, she prepared an investigation report listing four high-ranking MONUC officials against whom allegations had been made: [Mr. G.], [Mr. E.], [the Military Police Chief, MONUC-Kisangani] and the staff member. The main conclusion of [Ms. N.'s] report was that prostitution was a real fact in Kisangani, known by everybody and supported by the MONUC staff members, and that the individual cases identified should be formally investigated. With respect to the staff member, [Ms. N.] indicated in her report that she had visited 'Le Janic' on the night of 16 September 2004. As far as she could tell, it was a bar, and she spoke with two prostitutes there ... who were among a group of five girls ... [who] described their situation but did not provide signed statements. In particular, [one of them] is said to have stated, '[The Applicant] is the owner, ... that's his wife sitting on his lap she also works at MONUC. ... Everyone in Kisangani knows him. He's helped a lot of people here and is very protective of the girls who go out'. Following the discussions she held in Kisangani, [Ms. N.] indicated the following in her report:

'Very popular and adored by the prostitutes of Kisangani, [the Applicant], who is living with a prostitute ... working as a daily worker, opened a bar called 'Le Janic' ... He is there regularly every day as soon as he is over with his duty, as well as on Saturdays and Sundays. His girl friend ... works at the same time as barmaid and bar hostess. That bar is the favourite place of love affairs between the MONUC staff members and the prostitutes who are accosting customers there ... According to the information gathered he registered the bar with the name of his girl friend ... but he is the receipts manager himself. The authorization was issued by the Provincial Governor who is also keeping some prostitution relationships ... The bar is located on the Boulevard LUMUMBA. During the time of our visit in that place three (03) MONUC vehicles were parked there.'

... In her statement to the Panel, [Ms. N.] specified, however, that she had not witnessed any act of prostitution or soliciting at 'Le Janic' the night she went there, and that the information in this regard came solely from the interviews she had held, 'but in person [she] saw only people sitting there drinking, talking, laughing; that was all'. According to [Ms. N.], 'Le Janic' was a bar like any other, a meeting place. She recalled that peacekeeping personnel are generally viewed as 'targets' by the local population.

... The staff member states that on 15 September 2004, during [Ms. N.'s] visit to Kisangani, a Regional Administrative Officer, [Mr. OD.] (subsequently deceased, on 2 September 2005), went by 'Le Janic' several times and also followed [a member of the Camp Management Unit] to his home. [Mr. OD.], however, stated that he had been away on leave from 10 September to 25 October 2004. The staff member states that he learned the next day, 16 September 2004, that 'Le Janic' had been mentioned in a report written by [Mr. P.].

... Also on 16 September 2004, [Mr. G.] circulated an e-mail informing all MONUC staff of the decisions taken at the fourth meeting of the Sector Security Management Committee, held the preceding day, to impose restrictions on the staff's freedom of movement. According to the e-mail, various establishments, including the Hôtel des Chutes and the Zambeke, remained out of bounds for MONUC personnel. 'Le Janic' was not mentioned. In addition, United Nations personnel were not allowed to go out after 10.30 p.m., 'except for verifiable operational reasons'.

... Upon returning to Kinshasa after 17 September 2004 — the exact date is uncertain — [Ms. N.] submitted her report to the SRSG with the recommendation that a full investigation should be carried out as soon as possible ... She stated that she had also informed him orally of other allegations against other individuals who were not mentioned in her report because she had not been mandated to investigate them. However, she refused to disclose those names to the Panel. It should be noted here that [Ms. N.'s] report seems to have been leaked as soon as it was drafted,

and the information it contained was unfortunately passed on to the individuals concerned. The exact date of the leak is unknown, however.

... On 27 September 2004, in view of the allegations against him, [Mr. G.] was transferred to Kinshasa.

... On 29 September 2004, the SRSG set up a Board of Inquiry (No. 04/049) on the allegations of sexual misconduct made against several MONUC staff members in Kisangani.

... On 3 October 2004, [Mr. P.] sent to [Mr. W.] and [the PCO] a document containing 'clarifications' on 'the investigation into prostitution in Kisangani'. The document summed up the principal actions taken by [Mr. P.] since the e-mail of 26 August 2004 whereby [Mr. W.] had contacted him ... [and] contained an explanation of the problems [Mr. P.] had had with his superior, [Mr. G.].

... On 10 October 2004, [Ms. B.-M.] submitted a statement denying any cohabitation or close friendship with the staff member, claiming that he was merely a customer of her 'kiosk' and her 'terrace'.

... In mid-October 2004, according to [the PCO]'s end-of-assignment report, ... [the] Under-Secretary-General for Peacekeeping Operations ... visited MONUC and called for 'immediate action on sexual exploitation and abuse cases'. During the same period, more precisely from 24 October to 3 November 2004, the Secretary-General's Adviser on sexual exploitation and abuse by United Nations peacekeeping personnel visited the Democratic Republic of the Congo ...

... On 25 October 2004, upon his return from leave, the late [Mr. OD.] was informed of [Mr. G.'s] transfer to Kinshasa. He was also instructed to formally question [the Applicant] about the allegations against him. In that context, [Mr. O.] mentioned 'Le Janic' to [Mr. OD.] and showed him, on 26 October 2004, a digital photograph that he had taken of the place. [Mr. O.] said he had taken the pictures at the request of [the PCO] or [Ms. N.]. These pictures, which were not in the file but which the JDC secretariat managed to find after a long search, show the exterior of the establishment, called 'Janic Mode', with the inscription 'Mson d'habillement mixte — Salon de coiffure mixte et autres' ('Men's and women's clothing — Unisex hair salon and other'), and including a terrace with a few tables and chairs. [Mr. O.] said that he had taken these pictures well after the initial investigation carried out by [Mr. P.]. This appears to be confirmed by the 'attachment properties' of the pictures, which indicate the date as 25 October 2004.

... On 27 October 2004, the late [Mr. OD.] received, by e-mail, a letter from the MONUC administration for transmittal to the staff member, informing the latter that he was to be transferred to the Kinshasa office on the next available flight, namely 29 October 2004. [Mr. OD.] went personally to the staff member's home at around 6 p.m. to give him the letter. He said that he sounded the car horn in front of the building and that [Ms. B.-M.] came out on the balcony and told him that the staff member was at the shop. [Mr. OD.] then reportedly called [Mr. O.] to ask for directions to 'Le Janic' before going there. He did not find the staff member there, however, and called [Mr. O.] again to ask him to see whether [the Applicant] was still at the office; that turned out to be the case. [Mr. OD.] then went back to the MONUC offices to hand-deliver the letter to the person concerned, at around 7 p.m. In this connection, it should be pointed out that, in an e-mail addressed to the staff member on 2 February 2005 and contained in the file ... [Ms. B.-M.] explained that she had indeed been at [the Applicant's] residence on 27 October 2004 at around 6 p.m. when the late [Mr. OD.] ... had come looking for him. She said that she had gone there to deliver some articles of clothing ordered by the staff member. She also said that when the late [Mr. OD.] had spoken to her while she stood on the balcony, she had answered not that [the Applicant] was 'at the shop', but that he was 'not here yet'.

... The next day (28 October 2004), the late [Mr. OD.] questioned the staff member, in the presence of [Mr. O.], about the three allegations made against him: (1) that he was running a

business; (2) that the business in question was being used for purposes of prostitution; and (3) that the business was also frequented by underage prostitutes. The staff member denied these allegations, asserting that he was being targeted for racist reasons. That same day he sent a letter to that effect to [Mr. M. S.], Director of Administration, and to ... [the] Head of Office at MONUC-Kisangani.

... That same day (28 October 2004), [Mr. M.S.], Director of Administration, transmitted to [Mr. W.], Chief Security Officer, a memorandum from the Chairman of the Board of Inquiry (No. 04/049) established on 29 September 2004 ... It appears that the memorandum was accompanied by a preliminary investigation report concerning allegations of sexual exploitation and abuse, drawn up by an independent investigator under the direction of the SRSG. However, despite its enquiries and the requests it addressed to the MONUC office in Kinshasa, at the request of the Panel, the JDC secretariat did not manage to obtain the memorandum in question or its annex. In the memorandum to [Mr. W.], [Mr. M. S.] emphasized that, in view of the seriousness of the allegations, a security investigation should have been carried out prior to the establishment of the Board of Inquiry. He recommended that such an investigation should be conducted by a qualified team ... and that the report should be submitted to him by 15 November 2004, 'because of the sensitive and political nature of the case'.

... On 29 October 2004, the staff member left Kisangani for Kinshasa, in accordance with the orders he had received.

... In early November (the exact date is uncertain), [Ms. B.-M.] quit her job in the MONUC Security Section, complaining about the allegations that her business was being used for prostitution, and also because of an illness she had suffered in September 2004.

... By cable No. 822 of 2 November 2004, the SRSG informed the Under-Secretary-General for Peacekeeping Operations that, following the preliminary investigation, ... allegations [had been] made against the staff member ... Accordingly, in order to implement the Secretary-General's stated policy of 'zero tolerance' towards sexual exploitation and abuse, he requested that the staff member should be immediately suspended, with full pay, outside the mission area while the investigation was being conducted.

... By a memorandum dated 5 November 2004, which is not in the file, [the] Assistant Secretary-General for Human Resources Management, and the Under-Secretary-General for Peacekeeping Operations jointly appointed an investigation panel to look into allegations that two staff members had engaged in sexual exploitation and abuse. ...

... At the same time, by a memorandum dated 8 November 2004 ... the SRSG indicated that Board of Inquiry 04/049 ... had been suspended and that it would 'be re-convened with a new composition by taking into account the presence of military officers to investigate into allegations against military staff members this, in accordance with the procedures in force'.

... The investigation concerned specific individuals, [Mr. G.] and [the Applicant], and the team was furnished with the report submitted previously by [Ms. N.] and the information gathered by [Mr. P.].

... They completed their report on 7 December 2004 ... With respect to the staff member's case in particular, the key witnesses interviewed were the security guards ... , [Mr. OD.] and [Ms. B.-M.]. [A member of the Board] indicated that she had also spoken to various individuals (neighbours and passers by) in the vicinity of the staff member's apartment to determine whether he really lived there with [Ms. B.-M.], but that she had not taken any written depositions. In general, it seems that the environment in Kisangani had become very hostile when [the Board members] went there. It was thus difficult to gather testimony, especially since information on the ongoing investigations had been leaked. Finally, [Ms. N.], who said that she had also collaborated in the investigation, went back to 'Le Janic' ... and found that articles of clothing for sale had been

hung up there; that had not been the case at the time of her previous visit in September. Around 'Le Janic', which was then called 'Janic Mode', as [Ms. N.] pointed out, she did not find any prostitutes to interview because, she said, the establishment was no longer only a bar, but functioned mainly as a clothing boutique.

... By a memorandum dated 15 November 2004, [the] Director of the Division for Organizational Development, Office of Human Resources Management, informed the staff member that in view of the allegations against him — 'alleged running of a restaurant/bar which also functions as a brothel that is frequented by minor prostitutes' — he would be suspended with full pay for a period of three months, effective immediately, because of the ongoing investigation. She added that the staff member's letter of 28 October 2004, in which he denied the allegations ... had been taken into account and that he would be kept informed of the progress of the investigation, with which he was advised to cooperate fully. It should be specified here that the decision to suspend the staff member was taken after requests to that effect had been addressed to [the] Division for Organizational Development, Office of Human Resources Management, on 10 November 2004 by ... the Administrative Support Division, Office of Mission Support, Department of Peacekeeping Operations, and on 15 November 2004 by ... the Administrative Law Unit, Office of Human Resources Management. Following his suspension, the staff member returned on 19 November 2004 to his home in New Jersey, United States of America.

... By a memorandum dated 22 November 2004, [the Office of] Human Resources Management ... asked the members of the investigation panel ... to extend their preliminary investigation to include a third case, that of the staff member. On the same day, in a more general context, it should be noted that the newspaper *Le Monde* published an article entitled 'Kofi Annan s'indigne des exactions des casques bleus en mission de paix' ('Kofi Annan expresses outrage at peacekeepers' abuses'), following the Special Representative's 19 November 2004 report to the Secretary-General concerning the reprehensible conduct of certain MONUC peacekeepers, primarily in Bunia.

... The above-mentioned investigation panel ... conducted its work in the Democratic Republic of the Congo from 23 November to 10 December 2004 and in New York from 11 to 22 December 2004. During their stay in the Democratic Republic of the Congo, the investigation panel members spent only two days in Kisangani. During their stay in that city, some of them reportedly visited 'Le Janic' on 8 December 2004, but found no MONUC personnel there. For their investigation of the staff member's case, the investigation panel members say that they interviewed [Mr. P.], [the Regional Director, MONUC-Kisangani], [the] IT Systems Administrator, MONUC-Kisangani ... [Mr. G.], the late [Mr. OD.], [Ms. N.], and [the members of the Board], who had been instructed directly by the SRSG to carry out another investigation ... The investigation panel's final report was expressly based on [Ms. N.'s] report of September 2004 and also drew upon the testimony gathered [by the Board]. Regarding the relationship between the staff member and [Ms. B.-M.], the investigation panel's report indicated that it was widely known that the two were a couple. This statement was based on the testimony of [Mr. G.] (who said that he had seen the staff member and [Ms. B.-M.] at a party), the testimony of the security guards ... , the fact that [Ms. B.-M.] had been in [the Applicant's] home when the late [Mr. OD.] had gone there, and lastly [the] testimony [of another witness] ... The investigation panel also noted in its report that when [Ms. N.] had visited 'Le Janic' in September 2004, [Ms. B.-M.] had been seen sitting on the staff member's lap. With respect to the claim that 'Le Janic' was run by the staff member, the investigation panel noted that, according to the witnesses, the name of the bar was a combination of the names [of the Applicant and Ms. B.-M.] and that the security guards ... had said that they had seen the staff member's car (UN-0111) used several times to deliver drinks there. They had also said that on several occasions they had heard [Ms. B.-M.], who at the time had been a colleague of theirs at work, telephone the staff member to ask him to send a driver to buy supplies for 'Le Janic'. The staff member's drivers ... denied that they had transported food or drinks to 'Le Janic'.

... It seems that the investigation panel finalized its report on the staff member's case in December 2004, although the exact date is unknown (it was not transmitted to [the Office of] Human Resources Management ... until 11 February 2005 ... The investigation panel's conclusion was that the staff member 'was involved in the management of an establishment that is considered a meeting place for prostitutes and their clients. The Panel concluded that, given his involvement in the management of 'Le Janic' bar, [the Applicant] shares the responsibility for allowing the prostitution activities to take place in the establishment. Furthermore, the Panel concluded that [the Applicant] used UN assets and personnel for his personal benefit and for supporting a prostitution establishment'. Lastly, the report emphasized that the staff member had refused to be interviewed by the investigators in the absence of his lawyer, with the result that the investigation panel had been forced to proceed without his testimony.

... [The Board] meanwhile, submitted [its] investigation report to [Mr. M. S.] and [Mr. W.] of MONUC-Kinshasa on 7 December 2004 ... [A member of the Board] stated that she had also sent the report to the investigation panel. In the course of their investigations, the two teams had collaborated closely and exchanged their respective findings.

... On 16 December 2004, the staff member swore an 'affidavit' denying all the allegations made against him. In a letter dated 18 December 2004, his counsel requested the Director of the Division for Organizational Development to have this solemn declaration presented to the witnesses and investigators, with a view to challenging the false allegations made against his client.

... On 31 December 2004, the Secretary-General issued his sixteenth report on MONUC (S/2004/1034), in follow-up to his previous report (S/2004/650) of 16 August 2004. In the later report he revealed, inter alia, that a joint Department of Peacekeeping Operations/Office of Human Resources Management investigation panel had been dispatched to the Democratic Republic of the Congo to look into allegations made against five MONUC civilian personnel, who had been suspended pending the outcome of the investigations. The Secretary-General's report indicated that this panel was finalizing its report and that, in the meantime, 'the first elements of a larger team, headed by the Assistant Secretary-General for General Assembly and Conference Management ... have been deployed to the country. The team, which includes highly specialized civilian police investigators, will address outstanding allegations against military and civilian personnel in MONUC'. The report also stated that, of the 72 allegations of sexual misconduct examined by OIOS during its four-month mission in Bunia (June-September 2004), 8 could be substantiated ... The Secretary-General's report on the outcome of the OIOS investigation in the Democratic Republic of the Congo (A/59/661) was issued on 5 January 2005.

... On 2 February 2005, [Ms. B.-M.] sent the staff member an e-mail informing him that in December the investigators had questioned her about her relationship with him. On the same day, the staff member forwarded this e-mail to his counsel.

... On 11 February 2005, the investigation panel's report was transmitted by e-mail to [the Office of] Human Resources Management.

... On 16 February 2005, [the Department of] Peacekeeping Operations, informed [the Office of] Human Resources Management, that, based on the conclusions reached by the investigation panel, the Department of Peacekeeping Operations was recommending that appropriate disciplinary action should be initiated against [the Applicant]. She also emphasized the staff member's failure to cooperate with the preliminary investigation and recommended, 'due to the exceptional circumstances surrounding this case', that [the Applicant's] suspension with pay should be changed to suspension without pay, in accordance with staff rule 110.2 (a).

... The Chief of the Administrative Law Unit, Office of Human Resources Management, also informed [the Office of] Human Resources Management, in a memorandum dated 17 February 2005, that, in the light of the investigation panel's report, she was recommending that

[the Office] should pursue the matter as a disciplinary case against [the Applicant] under administrative instruction ST/AI/371 and extend his suspension, this time without pay. The Chief of the Administrative Law Unit stressed that, in the charge letter to be sent to the staff member, she had not charged [the Applicant] 'directly with any acts of sexual abuse and sexual exploitation under ST/SGB/2003/13, because the evidence against him, while ample, is not quite specific enough to merit such direct charges'. She explained, however, that the staff member 'is directly linked to the ownership and management of 'Le Janic' through his close and intimate relationship with the bar's owner of record ... since the staff member was the de facto manager of 'Le Janic', he knew it was a place where prostitutes and under-age girls solicited clients — including 'quality' clients, such as MONUC staff members; the staff member therefore actively condoned, if not directly abetted, acts of prostitution and sexual abuse and exploitation'.

... On 18 February 2005, the Director of the Division for Organizational Development sent the charge letter to the staff member informing him of the investigation panel's report. In the light of the report's conclusions, [the Applicant] was charged 'with improperly engaging in outside activities by financing and managing or co-managing the bar/restaurant 'Le Janic', and by improperly using the property, assets and personnel of the United Nations in connection therewith'. He was also charged 'with condoning and/or encouraging acts of sexual exploitation and sexual abuse, since 'Le Janic' was known by [him] and others to be a place where prostitutes (including under-age girls) solicited clients, including MONUC staff members'. He was further charged 'with discrediting the United Nations and acting in a manner unbecoming of [his] status of an international civil servant'. Lastly, it was alleged that he had refused to cooperate 'with the requests from United Nations investigators in their inquiries on the subject matter of the Report'. The staff member was given two weeks to answer these allegations.

... On the same day (18 February 2005), [the Office of] Human Resources Management ... also informed [the Department of] Management, that, in the light of the results of the investigation, which was now completed, she was recommending that the staff member's suspension should be extended, without pay. This request was approved on 22 February 2005 and, in a letter of that date, the Director of the Division for Organizational Development informed [the Applicant] that his suspension would be extended and that, given the exceptional circumstances of the case, the suspension would be without pay.

... On 3 March 2005, [Mr. G.] was summarily dismissed.

... On 4 March 2005, the staff member's counsel informed the Director of the Division for Organizational Development that his client denied all the allegations contained in the letter of 18 February 2005 ... and submitted comments. He also requested that the case should be conducted in French.

... On 10 March 2005, [the Office of] Human Resources Management ... sent a memorandum to the Secretary-General recommending the staff member's summary dismissal, based on the investigation panel's report.

... In a letter dated 16 March 2005, the Director of the Division for Organizational Development, Office of Human Resources Management, informed the staff member of his summary dismissal. The staff member acknowledged receipt of this letter on 18 March 2005.

... On 24 March 2005, the Adviser to the Secretary-General on sexual exploitation and abuse by United Nations peacekeeping personnel submitted his report ...

... In a memorandum dated 28 March 2005 addressed to the Secretary-General, the staff member's counsel requested, on behalf of his client, 'the review of the decision of 16 March 2005 to summarily dismiss [the Applicant] based on the four charges'. The staff member's counsel also requested the establishment of an ad hoc Joint Disciplinary Committee composed of French-speaking members, which would convene in Kisangani.

... [T]he Department of Management, informed the staff member's counsel, in a letter dated 4 May 2005, that, while the establishment of an ad hoc Joint Disciplinary Committee in Kisangani was not practicable, the Secretary-General could agree to have the case heard by the Geneva Joint Disciplinary Committee (hereinafter 'JDC'). The staff member's counsel then requested, in a letter dated 16 May 2005, the transfer of the case to the Geneva JDC; ... the Department of Management ... acceded to this request on 24 May 2005.'

The JDC adopted its report on 17 July 2006. Its considerations, conclusions and recommendation read, in part, as follows:

“Consideration of the charges

99. At the outset, the Panel noted that the main difficulty it faced in considering the case was the lack of truly complete information. Indeed, when it examined the file that the Representative of the Secretary-General had submitted to it, the Panel discovered many references to other documents — such as ... [the] investigation report [of the Board] — that had not been transmitted to it. It was concerned about this and therefore decided to conduct, through its secretariat, what proved to be a particularly long and difficult investigation. The Panel also noted at the outset that the case did not seem to have been properly investigated. On the contrary, it emerged that, in [the Applicant's] case, information had been gathered in an ad hoc manner by different people at different times, and these investigations always referred to previous investigations. The Panel therefore felt that it needed to see the findings of those other investigations, too, in order to understand exactly how events had unfolded. Indeed, the Panel believed that it had a duty to comprehend all the facets of the case submitted to it, while at the same time having an overview of the situation prevailing at MONUC at that time, in order to be in a position to form a valid opinion.

100. Against this backdrop, the Panel recalled that its role is to establish the facts and, in doing so, find out the truth. It cannot, therefore, simply rely on the file that the Representative of the Secretary-General or the other party has submitted to it, even if the Representative considers that the Administration's decision was based solely on the content of that file. On the contrary, if the Panel has doubts when reading the file submitted to it or is worried about certain aspects of it, it must be able to exercise its right to obtain other information and interview other witnesses. That right is necessary and essential if the Panel is to fulfil its duty to find out the truth and ensure that the case is considered in a truly impartial and independent manner. If, after having heard the witnesses in the presence of the two parties, the Panel still has doubts about the case, it has the right to continue its investigations. According to its rules of procedure, it may hear other witnesses, even in the absence of the parties, provided that the information thus obtained is transmitted to both parties for comment. The Panel wished to point out that those principles had been duly respected in the present case and that it was only after conducting new hearings of witnesses and further inquiries that the Panel was finally able to form an opinion, albeit only a majority opinion, not a unanimous one. This explains the particularly lengthy consideration of the case.

101. After these preliminary remarks, the Panel began its consideration of the charges laid against the staff member in the notice of summary dismissal sent to him on 16 March 2005 ... It considered the charges one by one, as set out below.

102. With regard to the first accusation, i.e. that of having 'improperly engaged in outside activities by managing or co-managing the bar/restaurant Le Janic and, by improperly using the property of the United Nations in connection therewith', the majority of the Panel members considered that nothing in the file established with a sufficient degree of certainty that the staff member was the manager, co-manager or even de facto manager of 'Le Janic'. To assist it in its analysis, the Panel identified the elements inherent to the activity of managing an establishment.

In that regard, it considered that the presence of any or all of the following elements could indicate that such an activity was taking place: (a) financial involvement; (b) the regular presence of the alleged manager at the establishment and his or her behaviour there; (c) the purchase and transport of supplies; (d) the existence of a relationship between the employees and the alleged owner; and (e) in some cases, the name of the establishment, as it may indicate a link with the owner.

103. The Panel then compared the information contained in the file with the aforementioned characteristics and concluded that:

(a) In the view of the majority of the Panel members, there was no proof that [the Applicant] had had any financial involvement in 'Le Janic'. Nothing in the file attests to any financial transaction between the staff member and [Ms. B.-M.], apart from the fact that both of them testified that [the Applicant] sometimes bought items for his personal use from [Ms. B.-M.] and had drinks at 'Le Janic'. There is not even anything in the file to suggest that the successive investigators really looked into this or tried to obtain concrete evidence, such as [Ms. B.-M.'s] accounts, for example. Admittedly, the file contains [the guards'] testimonies, according to which [Ms. B.-M.] told them that she sometimes received money from [the Applicant]. However, as explained below ... the majority of the Panel members considered that these financial transactions were related to [Ms. B.-M.'s] and [the Applicant's] intimate relationship, not to any desire on the part of the latter to be involved in running or financing [Ms. B.-M.'s] business, 'Le Janic'. The majority of the Panel members were therefore not convinced by the assertions that the staff member had knowingly been involved in financing 'Le Janic'. The majority of the Panel members also considered that the staff member's alleged financial involvement in 'Le Janic' could not be established on the basis of the testimony of [a] prostitute ... which had been obtained by [Ms. N.]. The Panel also noted that, because of the particularly difficult conditions on the ground in Kisangani, where MONUC employees were paid in cash, it was hard to prove any financial transaction, owing to the lack of a paper trail. This lack of evidence must, however, be interpreted to the benefit of the staff member. The Panel also noted that, in the end, the Administration did not include the charge of financial involvement in the decision on summary dismissal, even though that charge had been included in the initial letter setting out the allegations...

(b) As regards [the Applicant's] presence at 'Le Janic', the Panel noted that [the Applicant] himself had admitted to having gone there about a dozen times in all to have a drink with colleagues, the first time on 28 August 2004, shortly after 'Le Janic' opened (the establishment opened in August 2004, but the exact date is unknown). When [the Applicant] left Kisangani on 29 October 2004, two months had passed. The surveillance put in place by [Mr. P.], meanwhile, began at the very beginning of September and [Ms. N.'s] visit took place on 16 September 2004. [Mr. G.] was transferred out of Kisangani on 27 September 2004, as allegations had been made against him. The staff member, meanwhile, felt that he was being watched, allegedly by the late [Mr. OD.], as early as 15 September 2004 ... The period in question is, therefore, relatively short, yet [Ms. N.] stated in her report that [the Applicant] was at 'Le Janic' 'every day as soon as he is over with his duty, as well as on Saturdays and Sundays' ... However, the Panel found nothing in the file to substantiate [Ms. N.'s] claim. Even the source of this information is unknown, as [Ms. N.] stated that she had obtained her information from the Kisangani contact who had been her guide, but had not verified it. [Ms. N.] did not know [the Applicant]; it was her contact who pointed him out to her during her visit to 'Le Janic'. The Panel was unable to accept such information as evidence. Furthermore, the testimonies included in the file contain no specifics on the number of times [the Applicant] went to 'Le Janic'; all they say is that he went there 'sometimes' and only in order to have a drink. The Panel therefore considered that [the Applicant's] claim that he had been there 12 times over a period of about four (4) weeks was not surprising and did not point to any particular link between the staff member and 'Le Janic'; all it suggested was that he liked to go there to have a drink (something which the staff member has

never denied). As for [the Applicant's] behaviour at 'Le Janic', only one witness ... stated that the staff member was 'among the last to leave the bar because he had to lock up and take the vehicles straight back to their place [the Applicant's] and [Ms. B.-M.'s place]. According to his statement, he could see this activity from the computer centre that he owned a few metres from, and 'practically opposite', 'Le Janic'. However, the majority of the Panel members were of the view that this testimony was not relevant, as the fact that [the Applicant] was among the last to leave 'Le Janic' could be due to any number of reasons and does not necessarily mean that he was involved in managing the establishment. His intimate relationship with [Ms. B.-M.], in particular, would be a perfectly valid explanation for this behaviour...

(c) With respect to the purchase by [the Applicant] of provisions for 'Le Janic', the majority of the Panel members considered that the file contained no evidence that [the Applicant] had made any such purchases. The witnesses ... did state that they had on several occasions heard [Ms. B.-M.], who was their colleague at the time and who worked in the same office as they did, call the staff member on the telephone to tell him that there were not enough drinks at 'Le Janic', so that he could ask his drivers to transport merchandise there. [The witnesses] both stated that deliveries of drinks had been made to 'Le Janic' in vehicles belonging to MONUC, notably vehicle UN-0111, which was assigned for the use of the staff member. However, the two drivers in [the Applicant's] service ..., who used this vehicle, denied having delivered anything at all to 'Le Janic'. The Panel was not, however, convinced by the testimony of these two drivers. During their testimony to the Panel they also denied having been in [the Applicant's] apartment. However, according to the apartment building's security log, which the staff member himself submitted to the Panel, it appears that they visited [the Applicant] at his home on several occasions. The Panel found this indication to be troubling, as it undermines the credibility of the drivers in question, who moreover were in a position of subordination with respect to [the Applicant]. The Panel thus became convinced that, with respect to the transport of merchandise, the staff member had indeed acted for [Ms. B.-M.] on certain occasions by asking his drivers to deliver drinks to 'Le Janic'. On the other hand, it was not established that [the Applicant] had participated in the transactions or paid for the purchases made. With regard to the security guards' testimony to the effect that [Ms. B.-M.] had told them that [the Applicant] sometimes gave her money, the majority of the Panel members were convinced that the context for these money transfers was related to the intimate relationship between [Ms. B.-M.] and [the Applicant], and not to [the Applicant's] intention to participate financially in the management of 'Le Janic'. It is common for money or gifts to be exchanged within a relationship, and the recipient disposes of them as he or she sees fit. In the case in question, [Ms. B.-M.] also had her own source of income.

(d) With respect to the question of relationships, in the case submitted to it the Panel focused its attention solely on the relationship between [Ms. B.-M.] and the staff member, and not on the other employees of 'Le Janic'. As noted in (a), above, the file contains no evidence that these two individuals had a professional relationship as co-managers or as employee/supervisor with respect to 'Le Janic'. As regards [to] the testimony of [Ms. N.], who had written in her report that [Ms. B.-M.] had been sitting on [the Applicant's] lap when she visited 'Le Janic', the majority of the Panel members felt that it could not take this statement into account because [Ms. N.] did not know [the Applicant] and consequently was unable to verify his identity when he was pointed out to her. However, the Panel was convinced, on the basis of other testimony contained in the file, that [the Applicant] and [Ms. B.-M.] were very close and even lived together. In fact, the security guards stated that [Ms. B.-M.] very often came to work with the staff member, took her breaks with him, and even spoke to them about her relationship with him. [Mr. G.] also stated in his testimony to the investigation panel that '[the Applicant] was my neighbour in Plateau and [Ms. B.-M.] is his girlfriend'. However, this finding of

an intimate relationship between the staff member and [Ms. B.-M.] does not lead to the conclusion, in the view of the majority of the Panel members, that [the Applicant], by reason of his relationship with [Ms. B.-M.], was involved in the management of her business, even on a purely de facto basis.

(e) Lastly, with respect to the name ‘Le Janic’, the majority of the Panel members noted that the assumption that the name derived from the combination of the first names of [Ms. B.-M.] and [the Applicant] was based on the testimony of the two security guards, who stated that [Ms. B.-M.] herself had told them this. Moreover, [another witness] stated in her testimony to the Panel that [Ms. B.-M.] had told her this also, while denying any financial involvement of [the Applicant] in ‘Le Janic’. However, [Ms. B.-M.] denied these claims and submitted two ‘child blessing certificates’ for her children, claiming that their first names ... were the inspiration for the name ‘Janic’. The majority of the Panel members considered that there was no reason to question these official documents, whose veracity was not questioned by the parties. Since both versions of the origin of the name ‘Janic’ thus seemed plausible to the majority of the Panel members, they decided to give the staff member the benefit of the doubt on this point. They also noted that even if it had been proven that the name ‘Janic’ derived from the combination of the staff member’s first name ... and that of [Ms. B.-M.] ..., this would not have been sufficient to prove that [the Applicant] was involved in the management of ‘Le Janic’. [Ms. B.-M.’s] choice of this name for her business might also be legitimately explained solely by her intimate relationship with the staff member and her affection for him. But this in no way implies that [the Applicant] participated in any way in the management of [Ms. B.-M.’s] establishment.

104. In view of the above, the majority of the Panel members felt that the only established fact in the present case is that [the Applicant] sometimes assisted [Ms. B.-M.] by having his drivers transport drinks to ‘Le Janic’ ... This assistance is explicable in view of the relationship between the staff member and [Ms. B.-M.], a relationship of which the Panel was convinced ... Moreover, this fact does not in itself lead to the conclusion that, because of these deliveries, the staff member was a de facto co-manager of ‘Le Janic’. In this regard, the majority of the Panel members recalled the content of United Nations staff regulation 1.2 (m), which states that staff members shall not be ‘actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations’ (Panel’s emphasis). In view of all of the above, it is the view of the majority of the Panel members that the first part of the first charge (‘improperly engaged in outside activities by managing or co-managing the bar/restaurant Le Janic’) is not substantiated. However, the occasional deliveries made to ‘Le Janic’ with [the Applicant]’s assistance certainly indicate improper use of the property of the United Nations, since [the Applicant] used MONUC vehicles and the services of his drivers for private purposes. The second part of the first charge is therefore substantiated (‘improperly using the property of the United Nations’). The Panel noted that this misconduct is aggravated by the fact that the drinks delivered by the drivers were not intended for personal consumption, but were sold in an establishment which served as both a shop and a bar.

105. With respect to the second charge, that he ‘condoned and/or encouraged acts of sexual exploitation and sexual abuse’, the Panel unanimously agreed that only the first part of this charge had been established, namely, that he closed his eyes to (‘condoned’) acts of sexual exploitation and sexual abuse. The Panel was convinced that there were indeed prostitutes who frequented ‘Le Janic’, based on the statements made ... in particular, [that of the witness] who was able to observe what happened in this establishment during the evenings from his computer centre, which was located opposite. Furthermore, the Panel noted that [Ms. N.] had herself noted the presence of prostitutes during her visit to ‘Le Janic’ on 16 September 2004. According to all this testimony, there were no acts of prostitution as such at ‘Le Janic’, but the prostitutes present were there to find clients and/or respond to any propositions made by the establishment’s clientele. In the view

of the Panel, the presence of prostitutes — whether active or passive — constituted in itself sexual exploitation and/or sexual abuse, these terms being defined in Secretary-General's bulletin ST/SGB/2003/13 as 'any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically' and 'the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions')... Moreover, ... these prostitutes did indeed find clients at 'Le Janic', with whom they would leave by car, returning after half an hour, 'and so on and so forth'. According to the same witness, some of these prostitutes even served drinks at 'Le Janic'. The Panel was therefore convinced that violations of Secretary-General's bulletin ST/SGB/2003/13, as defined above, had effectively occurred, in view of the presence of prostitutes at 'Le Janic'. The Panel concluded that since the staff member frequented the establishment in question and had a relationship with [Ms. B.-M.] which placed him in a privileged position with her, he could and should have actively encouraged her to take measures to keep prostitutes out of her place of business. He was aware of the provisions of the aforementioned bulletin and, in accordance with his responsibilities as an international civil servant, and knowing that prostitutes frequented 'Le Janic', should have either persuaded his friend to ban the prostitutes or refrained from frequenting 'Le Janic' himself as long as prostitutes were present. Since he did neither the one nor the other, the Panel felt that by his conduct he had effectively condoned acts of sexual exploitation and sexual abuse. However, the Panel felt that the second part of the charge laid against the staff member, namely, that he had encouraged such acts, was not supported by sufficient evidence in the file. It was not established that the staff member had encouraged the presence of prostitutes at 'Le Janic' or even encouraged his colleagues to drink at 'Le Janic' because prostitutes were present there. Lastly, the Panel noted that the fact that 'Le Janic' had not been included in the list of places that were off limits to MONUC personnel did not, regardless of what occurred there, mean that the staff member was entitled to go there and to say nothing to [Ms. B.-M.]. The staff member's obligations applied wherever he was and at all times, and it would be simply disingenuous to assert the contrary.

106. With regard to the third charge, that he 'discredited the United Nations and acted in a manner unbecoming of [his] status of an international civil servant', the Panel unanimously agreed that this charge was closely related to the second charge. Since the Panel concluded above that the staff member had effectively been guilty of condoning acts of sexual exploitation and sexual abuse, the third charge is established. As indicated above, the Panel felt that the attitude of the staff member, who continued to frequent 'Le Janic' and did not intervene with his friend [Ms. B.-M.] with a view to preventing the presence of prostitutes there, was well below the standard of behaviour required of an international civil servant. This behaviour clearly discredited the United Nations, since employees of the Organization are required to conduct themselves in an irreproachable manner consistent with the important responsibilities conferred upon them with respect to local populations that are often disadvantaged, and therefore vulnerable. To the Panel's dismay, it appears that the frequenting of prostitutes and the occurrence of other acts of sexual exploitation and sexual abuse were in fact very common behaviour within MONUC. This conclusion is borne out by the testimony heard by the Panel and by press clippings from the period. The Panel emphasized in this regard that the fact that this type of misconduct was very widespread in no way absolves the staff member of his responsibility. The attitude 'I tolerate it because others do so too' must be eradicated.

107. Lastly, with respect to the fourth charge, that he 'refused to cooperate with the requests from the United Nations investigators in their inquiries on the subject matter of the Report', the Panel unanimously agreed that the staff member had indeed refused to cooperate with the investigators. The duty of staff members to cooperate with a preliminary investigation is a well-established principle. During this stage of an investigation, and until the staff member in question has received written notification of the allegations made against him and of his right to respond — that is, until he has been formally charged with misconduct (in the present case, 18 February 2005 (charge letter)) the duty to cooperate fully also implies that he is not entitled to the assistance of counsel. The Panel found that these principles, which have long been applied within the United Nations system, had been duly communicated to the staff member in the present case. It was

therefore with full prior knowledge that he refused to speak with the investigators, repeatedly insisting that his lawyer should be present. The staff member decided to adopt such an attitude at his own peril, and this lack of cooperation effectively undermined the proceedings. The Panel noted his additional assertion that he had been unable to respond to the investigators' questions because of illness. However, the question of the presence of counsel was consistently in evidence, and the staff member ultimately failed to attend the last scheduled meeting with the investigators, on 1 December 2004, on the grounds that he was ill and had not been able to contact his lawyer in this regard. He sent an e-mail to this effect, on 30 November 2004 ... requesting that the investigators' questions should be sent to him in writing. However, this e-mail never reached its addressee, and the staff member was informed of this error. Thus, [the Applicant] did not attend the scheduled meeting, and the Administration, because of this lack of cooperation, decided to proceed without his testimony. The Panel concluded that this decision was well founded and understandable in view of the staff member's attitude and the fact that written questions and answers cannot be accepted as the sole form of testimony in the context of an inquiry of this nature, which requires a direct exchange with the staff member.

108. In view of the above, the Panel reached the following conclusions:

(a) First allegation:

The majority of the Panel members felt that the allegation of having 'improperly engaged in outside activities by managing or co-managing the bar/restaurant Le Janic and, by improperly using the property of the United Nations in connection therewith' was established only with respect to its second part; namely, that he improperly used the property of the United Nations in connection with the commercial establishment 'Le Janic'.

(b) Second allegation:

The Panel unanimously agreed that the allegation of having 'condoned and/or encouraged acts of sexual exploitation and sexual abuse' was established only with respect to its first part; namely, that he condoned acts of sexual exploitation and sexual abuse.

(c) Third allegation:

The Panel unanimously agreed that the allegation of having 'discredited the United Nations and acted in a manner unbecoming of [the staff member's] status of an international civil servant' was established, given that the second charge was substantiated.

(d) Fourth allegation:

The Panel unanimously agreed that the allegation of having 'refused to cooperate with the requests from the United Nations investigators in their inquiries on the subject matter of the Report' was established.

109. Having determined the above, the Panel proceeded to consider the alleged procedural violations raised by the staff member and concluded that his rights had not been violated. In particular, with regard to the alleged 'variations and inconsistencies' in the charges ... the Panel did not find any. It is true that the charges contained in the charge letter and those contained in the decision of summary dismissal were slightly different, but no new charges were introduced. The references to financing, to assets and personnel of the United Nations and to minor prostitutes had indeed been dropped, but the effect of this was to reduce the seriousness of the actions of which the staff member was accused, not to bring new charges, which would in fact have been prohibited and would have constituted a violation of the rights of the accused. Only the broader references to the management or co-management of an establishment, the use of the property of the United Nations, and the condoning and/or encouragement of acts of sexual exploitation and sexual abuse were retained and, moreover, were present from the beginning of the preliminary investigation.

The Administration cannot therefore be reproached in any way on this point. In the same context, the Panel found that the staff member's claim that the issuance of information circular ST/IC/2005/51 had caused irreparable harm to him and his family ... was unfounded. His anonymity had clearly been respected in this issuance, which moreover is a biennial summary of all United Nations disciplinary cases, designed to remind staff members not only of their duties, but also of the principles underlying the disciplinary procedure.

110. With respect to the staff member's objections concerning the investigation ... the Panel did not detect any irregularities or formal defects. However, the Panel felt that none of the investigations in this case had been carried out in a complete and thorough manner. The fact that there had been a number of overlapping and incomplete investigations in the staff member's case was a matter of profound concern to the Panel. This clearly reflected an inexcusable lack of coordination, for which a higher level of the Administration was to blame. It is also troubling to note the lack of clarity regarding the responsibilities of each of the actors in this case, and to learn in particular from some of the investigators ([Mr. P.] and [Ms. N.]) that they were not conducting an inquiry as such, but rather gathering information, some of which was based solely on rumours. They did not, in fact, verify all the information that they had gathered because they thought that a full and independent investigation would follow. However, no such full and independent investigation was ever carried out in the present case, since [the various investigations] ultimately based their findings primarily on the outcome of these preliminary investigations without going any further, and thus regarded the rumours conveyed by their predecessors as having been substantiated, although their mission should in fact have consisted of properly verifying this information.

111. However, having made these observations, the Panel noted that there were no procedural defects, because it was ultimately able — after considerable research and after hearing the witnesses' testimony — to disentangle the mass of information submitted to it, establish the facts, and identify those elements that were relevant to the case and admissible as evidence. On the basis of these elements, and as set out in its argument above, the majority of the Panel members ultimately reached the same conclusions as the Administration, except with regard to the charges of co-managing a bar/restaurant and encouraging acts of sexual exploitation and sexual abuse, for which there was no evidence. However, the Panel noted that the staff member's case revealed a lack of guidelines for Administration investigations into matters of a sensitive nature such as allegations of acts of sexual exploitation and/or sexual abuse. In the view of the Panel, the rules to be applied to such investigations should be particularly stringent and precise. Such investigations should establish the facts and only the facts, and not be based on rumours. The present case also demonstrates the need to adopt a coordinated approach to future cases of the same nature...

112. Lastly, the Panel felt it necessary to draft a severe commentary on the attitude of the staff member, and of his counsel in particular, who, during the hearings of November 2005, quickly developed a 'conspiracy theory' according to which [the Applicant] was the victim of a conspiracy driven essentially by the late [Mr. OD.]. The particularly odious charges made on that occasion against a deceased individual shocked the Panel, which wished to express in this report its distaste for such defamatory practices. Although it was not in a position to question the late [Mr. OD.] about these charges, the Panel nonetheless asked witnesses a series of questions concerning the 'Riverside Inn' bar and the activities that took place there ..., in order to assure the staff member that all avenues had been explored. Those who knew the 'Riverside Inn' denied that there had been problems with prostitution at this meeting place for MONUC staff. The Panel was thus not convinced of the existence of a so-called plot against the staff member, who furthermore did not produce any tangible evidence to substantiate his allegations. His proposal that the Panel should hear testimony from [Ms. B.-M.]'s cousin ... who had allegedly been forced by the late [Mr. OD.] to have an abortion, was rejected by the Panel, as this witness did not appear to be credible and brought nothing substantial to the case beyond very serious accusations against an individual who was deceased and thus unable to defend himself.

113. Having determined that there had been no procedural irregularities, the Panel concluded by considering the question of whether the disciplinary measure taken was proportionate in view of the charges that it considered to be established ... In this context, the Panel recalled the broad discretionary power enjoyed by the Secretary-General in disciplinary matters. This power includes determining what constitutes misconduct and determining the appropriate measure to penalize the staff member in the light of his misconduct. However, this power may not be abused, and the punishment must not be disproportionate. The United Nations Administrative Tribunal has considered the question of proportionality (for example, Judgement No. 897, Jhuthi (1998), and Judgement No. 1274, ... (2005)). In the present case, the majority of the Panel members considered that the allegations made against the staff member were established, with the exception of the allegations that he was involved in the management of 'Le Janic' and that he had encouraged, not just condoned, acts of sexual exploitation and sexual abuse. Had these two charges been substantiated, the Panel would have considered the staff member's responsibility for the presence of prostitutes at 'Le Janic' as more significant, and would have recommended summary dismissal. However, the majority of the Panel members felt that neither the charge of co-management nor the charge of encouraging sexual exploitation and sexual abuse had been established. The acts of which the staff member was accused thus become relatively less serious than those that the Administration had initially taken into consideration, which had led to the decision of summary dismissal. Thus, considering the charges that the majority of the Panel members ultimately took into consideration, namely that he used the property of the United Nations for inappropriate purposes (to transport drinks to 'Le Janic'), that he condoned acts of sexual exploitation and sexual abuse, thereby discrediting the United Nations, and, lastly, that he refused to cooperate with the investigation, the Panel considered that although they certainly constituted serious misconduct, they did not merit summary dismissal, which is the most serious punishment. Moreover, up to that point the staff member's professional career had been exemplary.

114. But the Panel conceded that the staff member's conduct had brought discredit on the United Nations at a particularly difficult period in its history and that his attitude was not worthy of an international civil servant and was incompatible with his continued employment. The staff member's actions are in violation of staff regulation 1.2 ... and do not meet the standards of conduct expected of an international civil servant, which require in particular that he or she not condone acts of prostitution committed in peacekeeping missions. In the view of the Panel, the measures to be taken should also be severe enough to reflect the 'zero tolerance' policy introduced by the Secretary-General to address sexual exploitation and sexual abuse. The Panel therefore considered that it was indeed necessary that the staff member should be separated from service. In view of his misconduct and the image of MONUC in the media, this separation had to occur with immediate effect. In the view of the majority of the Panel members, the appropriate disciplinary measure should therefore have been separation from service without compensation in lieu of notice ..., with effect from 18 March 2005. Summary dismissal was a disproportionate measure, in the light of the observations made ... above.

Conclusions and recommendations

115. In view of the above arguments, the majority of the Panel members conclude that the only charges against the staff member that are established are that he:

1. Improperly used the property of the United Nations;
2. Condoned acts of sexual exploitation and sexual abuse;
3. Discredited the United Nations and acted in a manner unbecoming of [his] status of an international civil servant; and
4. Refused to cooperate with the requests from the United Nations investigators in their inquiries on the subject matter of the Report.

116. Consequently, the majority of the Panel members recommend that the Secretary-General replace his decision of summary dismissal with a disciplinary measure consisting of separation from service without compensation in lieu of notice. The staff member, having already been separated from the Organization, should therefore receive, on a retroactive basis, the termination indemnity provided for in staff rule 109.4, as well as any allowances to which he would have been entitled as of the date of separation from service (18 March 2005).”

On 12 October 2006, the Department of Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General has examined your case in the light of the JDC’s Report, as well as the entire record of the totality of the circumstances. With respect to the first part of the first charge, i.e., improperly engaging in side activities by managing or co-managing the bar/restaurant ‘Le Janic’, the Secretary-General has decided to accept the conclusion of the minority that you were a de facto comanager of ‘Le Janic’ and, therefore, improperly engaged in outside activities. The Secretary-General also accepts, with respect to the second part of the first charge, improperly using the property of the UN, the unanimous conclusion of the JDC that occasional deliveries made to ‘Le Janic’ with your assistance indicated improper use of the property of the UN. With respect to the second charge, the Secretary-General also accepts the unanimous conclusion of the JDC that only the first part of this charge had been established, namely, that you ‘condoned’ acts of sexual exploitation and abuse. With respect to the third charge, the Secretary-General accepts the unanimous conclusion that you discredited the UN and acted in a manner unbecoming of your status as an international civil servant. As to the fourth charge that you refused to cooperate with requests from UN investigators in their inquiries on the subject matter, the Secretary-General also accepts the unanimous conclusion of the JDC that you had indeed refused to cooperate with the investigators. After considering conclusions of the minority of the JDC with respect to the first part of the first charge and the unanimous conclusions of the JDC with respect to the second part of the first charge and the second, third and fourth charges, Secretary-General regrets to inform you that he has decided, in accordance with the recommendation of the minority of the JDC, to let the sanction of summary dismissal stand.”

On 18 April 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The Respondent failed to conduct a valid and thorough preliminary investigation which might have justified a decision for summary dismissal of the Applicant.
2. The decision to summarily dismiss the Applicant in the absence of a thorough preliminary investigation conducted in good and due form in accordance with the rules recognized by the Tribunal and the United Nations is invalid, null, and without foundation.
3. The Applicant’s procedural rights were violated.

Whereas the Respondent’s principal contentions are:

1. The pleas of the Applicant to take action to protect the evidence and to hear witnesses are neither necessary nor desirable.

2. The theory of a conspiracy by certain staff members against the Applicant has, quite rightly, been entirely rejected by all the members of the JDC Panel.

3. The Applicant has been accorded due process and has been given fair treatment.

4. The Applicant has not respected the standards of conduct required of an international civil servant and the disciplinary measure is not disproportionate to the offence.

The Tribunal, having deliberated from 29 June to 31 July 2009, now pronounces the following Judgement:

I. The Applicant was initially placed on Special Leave with Full Pay on 19 November 2004. He was informed of the charges against him on 18 February 2005. He was put on Special Leave Without Pay on 23 February 2005, for the alleged commission of various acts contrary to the Sexual Exploitation and Abuse (SEA) and United Nations Staff Regulations and Rules. The Applicant was summarily dismissed on 16 March 2005.

II. The charges against the Applicant were that he (a) improperly engaged in outside activities by managing or co-managing the bar/restaurant “Le Janic” and that he improperly used United Nations property in connection therewith; (b) condoned and/or encouraged acts of sexual exploitation and sexual abuse; (c) discredited the United Nations and acted in a manner unbecoming his status as an international civil servant; and (d) refused to cooperate with the requests from the United Nations investigators in their inquiries on the subject matter.

III. The majority of the JDC concluded that, of the four allegations, not all of the allegations had been established. The majority found that the following charges were proven: improper use of the property of the United Nations — but not the co-managing of the bar; condoning, but not encouraging, acts of sexual exploitation and sexual abuse; discrediting the United Nations and acting in a manner unbecoming of his status as an international civil servant; and refusing to cooperate with the requests from the United Nations investigators. Consequently the majority of the JDC recommended that the Secretary-General change his decision of summary dismissal to the disciplinary measure of separation from service without notice or compensation in lieu thereof. The minority JDC opinion concluded that the Administration had established a prima facie case of serious misconduct and that the Applicant had not presented any plausible, credible rebuttal or other exculpatory evidence and recommended to maintain the summary dismissal. On 12 October 2006, the Applicant was advised that the Secretary-General had decided to maintain the summary dismissal. That is the contested decision.

IV. The JDC expressed its “doubts” about the preliminary inquiry prior to the Applicant’s dismissal, and proceeded therefore to hear further testimony in proceedings during the years 2005 and 2006. On the

first charge, the majority and minority JDC members diverged as to the Applicant's role as manager or co-manager of the bar/restaurant frequented by women that also served drinks. All Panel members however agreed that the bar/restaurant, which was ostensibly managed by the Applicant's girlfriend, occasionally received spirits ordered by the Applicant and delivered by United Nations drivers in United Nations vehicles. The Applicant admitted at the time that he was an occasional patron of the establishment, yet the majority of the JDC Panel found that he probably attended daily and was the last one to leave the premises together with his girlfriend, whom he also accompanied when she arrived at the bar to begin her work. The majority found that these facts did not prove the Applicant's financial involvement in the management of the bar/restaurant. The minority opinion disagreed on this issue.

V. The Tribunal accepts the view of the JDC majority that the Applicant did not co-manage the bar/restaurant or had any financial involvement in the bar, but that his conduct at the very least revealed that he had some involvement in the bar's activities. The opinion of the minority member stressed that people referred to him as "le patron", "the Big Man", and that he was at least involved in closing the bar after hours. The Applicant's improper use of United Nations vehicles and use of United Nations personnel to deliver spirits to the establishment shows conduct unbecoming an international civil servant.

VI. An international civil servant of the United Nations cannot be involved or appear to be involved in this type of establishment or any other similar type of business for that matter. As a staff member of the United Nations, his conduct must not only be proper, but it must also appear to be proper. That boundary, the Tribunal finds, has been widely surpassed in the present case.

VII. With respect to the second charge, the JDC Panel unanimously found that the Applicant "condoned" acts of sexual exploitation at the place of business; however, the majority and minority diverged as to whether he also "encouraged" such acts. The Tribunal finds that the facts underlying the second charge of condoning acts of sexual exploitation further substantiated the third charge of conduct unbecoming the status of an international civil servant. The JDC unanimously agreed on the fourth charge, according to which the Applicant had refused to cooperate with the investigation authorities.

VIII. The JDC majority recommended to the Secretary-General that the decision of summary dismissal be changed to the disciplinary measure of separation from service without notice or compensation in lieu thereof. The dissenting JDC Panel member concluded that the Administration had established a prima facie case of serious misconduct and recommended to maintain the summary dismissal.

IX. Both disciplinary measures would result in the separation of the Applicant from the Organization. The disciplinary measure of separation from service without notice or compensation in lieu thereof would entitle the Applicant, as an international professional, to a repatriation grant allowance; however, he would

not receive compensation for termination of his appointment in lieu of notice in accordance with staff rule 109.3. Moreover, in accordance with Annex III(c) to the 100 series staff rules, where a staff member is dismissed for misconduct, he may be paid a termination indemnity at the discretion of the Secretary-General. In the case of summary dismissal, a staff member does not receive any compensation, i.e., compensation for termination of his appointment in lieu of notice, repatriation grant, or termination indemnity. There is therefore only a minor financial difference between the two disciplinary measures, but summary dismissal is clearly considered as the heaviest disciplinary sanction according to Article X.

X. While the minority JDC member found that summary dismissal was the appropriate sanction, the JDC majority concluded that the sanction imposed should be separation from service without notice or compensation in lieu thereof. The case would thus seem to fall well within the discretionary power of the Administration. The Secretary-General took into consideration all of the evidence and, based on the Applicant's serious misconduct, decided to summarily dismiss him. The Tribunal has consistently confirmed the Secretary-General's broad discretion to take decisions in disciplinary cases. In Judgement No. 941, *Kiwanuka* (1999), the Tribunal stated the following:

“II. In its jurisprudence, the Tribunal 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.” (Judgements No. 300, *Sheye*, para. IX (1982); and No. 210, *Reid*, para. III (1976)).

XI. The Tribunal emphasizes further 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. (Cf. Judgements No. 494, *Rezene* (1990); No. 529, *Dey* (1991); No. 551, *Mohapi* (1992); No. 582, *Neuman* (1992); No. 641, *Farid* (1994); and No. 673, *Hossain* (1994)).” The same criterion was applied in Judgement No. 583, *Djimbaye*, (1992), paragraph VI: “[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”.

XII. The Tribunal finds that the sanction is proportionate to the Applicant's serious misconduct. The Application is therefore not well founded in that respect. The Tribunal has consistently held such view, for instance in Judgement No. 1187, *Igwebe* (2004):

“VI. The Applicant asserts that separation from service was disproportionately harsh in the circumstances of her case. Whilst the Tribunal has ‘consistently taken the view that the Secretary-General has broad discretion under this regulation with regard to disciplinary matters, and this includes determinations of what constitutes serious misconduct, as well as the appropriate discipline’ (Judgement No. 436, *Wiedl* (1988)), such discretion can be vitiated if the sanction imposed is found to be disproportionate. In Judgement No. 1090, *Berg* (2002), the Tribunal held

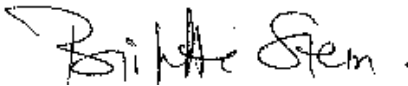
that, in imposing disciplinary measures disproportionate to the facts, '[t]he Respondent's actions exceeded the scope of his broad discretionary powers'. The Tribunal has undertaken proportionality reviews in a number of disciplinary cases and has awarded compensation where it found that the disciplinary sanction imposed was disproportionate in the circumstances of the case. (See, for example, *Berg*, *ibid.*, and Judgement No. 1011, *Iddi* (2001).) In the instant case, the Tribunal finds that separation from service was not disproportionate and was, in contrast, entirely appropriate in the circumstances. It is disappointing that such a measure had to be imposed upon a staff member so close to retirement, but the Applicant herself bears the responsibility. The United Nations is entitled to expect a level of decorum and conduct from its staff members which is far above that displayed by the Applicant of defamation, hostility, and both veiled and actual threats." (See also Judgements No. 1274, (2005); 1187; No. 436, *Wiedl* (1988); and No. 1167, *Olenja* (2004).)

XIII. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)



Spyridon Flogaitis
President

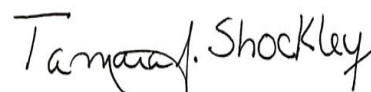


Brigitte Stern
Member



Agustín Gordillo
Member

Geneva, 31 July 2009



Tamara Shockley
Executive Secretary