

The Administrative Tribunal,

Considering the complaint filed by Mr F.L. G. against the International Labour Organization (ILO) on 13 April 2005 and corrected on 12 May, the Organization's reply of 1 July, the complainant's rejoinder of 5 September and the ILO's surrejoinder of 12 October 2005;

Considering Article II, paragraph 1, of the Statute of the Tribunal, and Article 5, paragraphs 1 and 2, of its Rules;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of Benin born in 1944, is a specialist in social security. He joined the International Labour Office, the secretariat of the ILO, in March 1987. After serving as Director of the ILO Office in Kinshasa (Democratic Republic of the Congo) since April 1998, he was appointed in May 2001 as Deputy Director of the ILO Regional Office for Africa in Abidjan (Côte d'Ivoire) at grade D.1. Owing to serious unrest in Côte d'Ivoire, the international staff of the Abidjan Office were moved to Dakar (Senegal) from February to April 2003.

In March 2003 the complainant wrote to the Office of the Director-General, complaining about shortcomings in the administrative and financial management of both the Regional Office and a social security project in Gabon. He also made a number of allegations concerning the Regional Director, inter alia of harassment.

In response to this letter the Director-General instructed the Internal Auditor to carry out an investigation. The latter paid a visit to Abidjan at the end of April. In his report of 11 July 2003 he noted a breakdown in the working relationship between the Regional Director and her deputy. He recommended that the complainant be moved out of the "Africa Department" and that an appropriate sanction against him be considered in respect of his unsubstantiated accusations. He also recommended that the Regional Director take steps to increase her presence at the Regional Office and to improve her management style, particularly from the point of view of delegating authority, communication and compliance with rules and regulations. At the end of October the complainant purchased an airline ticket to go to the Organization's Headquarters in Geneva. He was transferred to the International Social Security Association (ISSA) in Geneva with effect from 1 November 2003 and retired on 1 October 2004.

By letter of 27 November 2003, handed to the complainant on 19 January 2004, the Administration proposed to apply a sanction (censure) against him on the grounds that the facts he had brought to the attention of the Director-General contained "loose allegations". The complainant submitted his comments on 28 January but did not sign the sanction proposal as requested. He asked to be sent a copy of the Internal Auditor's report, which he received on 27 April. Finally, the complainant referred the matter to the Joint Panel on 27 July. In its report dated 26 November 2004 but transmitted to the parties on 10 December 2004, the Panel recalled that it had confined its examination of the case to the issue of the way in which the Internal Auditor had dealt with the allegation of harassment, and that of compliance with the procedure following the sanction proposal. It recommended that the Office formally confirm to the complainant in writing that the sanction procedure against him had been dropped and that the file containing the sanction proposal be destroyed. By letter of 18 January 2005 the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had agreed to confirm that the proposed sanction had been withdrawn "in view of [his] current status", but that he deemed the Joint Panel's recommendation regarding the file in which the sanction proposal appeared to be "*ultra vires*". Nevertheless, "since the procedure ha[d] been withdrawn", he agreed that the documents concerning the proposed sanction should be destroyed. That is the impugned decision.

B. The complainant puts forward his version of the facts and asserts that in July 2002 he drew the Regional Director's attention to bad management by the Yaoundé Office (Cameroon) of some social protection projects in

Cameroon and in Gabon and to non-compliance with the applicable rules in the administrative and financial management of the Regional Office. He adds that it was only after informing his supervisors, and in agreement with the Social Security Department at Headquarters, that he took the necessary action to put right the observed management shortcomings and to limit their impact on technical cooperation projects. He maintains that he was the only member of the Regional Office to have been kept in Dakar after April 2003 and that he was “forgotten” there until October 2003 without any assignment or supervisory duty. He contends that in breach of the Staff Regulations the defendant was unwilling to let him return to Dakar or Abidjan in order to transfer his belongings to Geneva and also refused to refund his Dakar-Geneva airline ticket and to pay him the establishment allowance in Geneva. He accuses the Administration of having brought pressure to bear on him in order to force him to accept a lower grade (P.5). In addition, he was transferred to the ISSA “without an office appropriate to his rank and without supervisory duties”.

He asserts that, although the Administration suggested that he do so, he never sought the Director-General’s “leniency” for the latter to shelve the case without applying the sanction proposal, since he believes that he only did his duty. Similarly, he refused the offer of a settlement, consisting in a letter of recognition for services rendered, on the grounds that it would not guarantee the protection of other officials who denounced fraud.

According to the complainant, although the Internal Auditor’s report is confused and inconsistent, and while some of the assessments it contains lack objectivity, it does confirm the serious facts he had reported and includes recommendations regarding ways of remedying the deficiencies. He disagrees, however, with the procedure followed by the Auditor. Several weeks before his mission to Abidjan, the latter informed the Regional Director in advance of the facts on which the forthcoming audit would be based. In the complainant’s view, evidence disappeared and witnesses were bribed as a result. He finds it abnormal that there should be no possibility of discussing the Auditor’s report. He accuses the Organization of having breached the rights of the defence by failing to convene the Joint Committee, in accordance with Article 12.2 of the Staff Regulations. He also alleges a breach of Article 13.10 of the Financial Rules, according to which “[n]o staff member who provides such information shall be adversely affected unless this information was wilfully provided with the knowledge that it was false or with intent to misinform”. Thus, according to the complainant, by considering that the Joint Panel’s recommendation concerning the destruction of the file was *ultra vires* and by indicating that the sanction proposal had been withdrawn only because he had retired, the impugned decision does not recognise the error of law which was committed and does nothing to remedy the moral and material injury incurred. He adds that, on account of the Administration’s negligence, he was denied the opportunity to attend the retirement preparation seminar and thus suffered further injury.

The complainant asks for the impugned decision to be set aside, to be awarded compensation for moral and material injury and for the sanction proposal to be unequivocally withdrawn.

C. In its reply the ILO submits that on 28 January 2003 the Regional Director for Africa complained to the Office of the Director-General about the complainant’s behaviour. She accused him of exceeding the scope of his terms of reference and authority by assuming the role of principal technical adviser on a social security project in Gabon to the detriment of his duties as Deputy Director, of having failed to keep her informed of his activities in relation to the project and of having favoured a consultant by recruiting him for the project on his own authority. It also submits that in his communication of 6 March 2003 the complainant requested a transfer from the Regional Office.

Referring to Article 5(1) of the Tribunal’s Rules, the Organization considers the complaint irreceivable on the grounds that the complainant’s counsel is not, contrary to what he maintains, a “former official” of the ILO but a legal officer recruited by the Staff Union under a special short-term contract, and that he has not provided a power of attorney, as required by Article 5(2).

On the merits it points out that no decision to apply a sanction to the complainant was ever taken and that the impugned decision, which is legally well founded and not tainted with any error of law or fact, merely confirms the withdrawal of the disciplinary procedure. The claim for the sanction proposal to be withdrawn should therefore be rejected for want of a cause of action. It suspects the complainant of trying to challenge decisions against which he did not appeal in time or which he himself brought about through his attitude. It accuses him of “preferring the indirect approach of an on-going dialogue with [the Human Resources Development Department]” instead of initialling the proposal for a sanction as requested. While the reason for the proposal was the complainant’s “loose allegations”, the Auditor’s report is more specific. It indicates that the allegations were probably formulated in

reaction to the complaints concerning him made by the Regional Director and that they were grossly exaggerated and framed in such a way as to suggest misconduct and personal benefit on her part, which was not substantiated by the findings of the audit. Moreover, while the Financial Rules provide protection for staff members who report fraud or attempted fraud, it is subject to the proviso that such information must be reported in good faith and properly substantiated. These rules are not designed to encourage acts of revenge or reprisal.

The Organization emphasises that at every stage of the audit both parties were given the provisional findings of the inquiry and had the opportunity to comment. As for the alleged moral and material injury, it contends that the complainant is referring to a series of facts which are unrelated to the sanction proposal. It adds that his transfer request was met within a reasonable time without affecting his dignity. It points out that the complainant opted for the payment of the element of the mobility, hardship and non-removal allowance referred to in Article 3.11(b)(iii) of the Staff Regulations, thereby forfeiting the payment of removal expenses. He was nevertheless informed that he was entitled to removal of his household effects from Abidjan to Cotonou (Benin) and to the reimbursement of the cost of transporting his personal effects from Abidjan to Geneva. He was not, on the other hand, entitled to the assignment grant, since his assignment was for less than one year. Lastly, as regards his journey from Dakar to Geneva, it was specified in the notification of his transfer that he should inform the Office of his travel plans so that appropriate arrangements could be made. As for moral injury, the defendant considers that this has not been established.

D. In the rejoinder the complainant's counsel states, regarding receivability, that although he is now working under external collaboration contracts owing to the ILO's refusal to allow the Staff Union to regularise his situation, he did serve as an official of the ILO from August to December 2004, as witness a statement drawn up by the Human Resources Operations and Development Branch and an identity document issued by the ILO, both of which he produces.

The complainant maintains that he learnt of the Regional Director's complaints concerning him only when he read the Organization's reply to the present complaint. He could not therefore have acted in reaction to them. He recalls that on the date the letter containing those complaints was sent, i.e. 28 January 2003, which according to him was "conveniently prior to the date of his own grievance", the whole staff of the Abidjan Office was busy coping with a crisis, and that the Director-General still assigned important duties to him in February 2003, which would be surprising had his management been called into question. He alleges that the procedure followed was discriminatory in that although his own allegations were formally transmitted by the Office to the Regional Director, he was not informed of the details of her complaints against him. He denies that both parties received the preliminary findings of the inquiry at every stage of the audit, and he accuses the Auditor of having been very partial in the conduct of his inquiry in Abidjan, where he interviewed only people close to the Regional Director.

He accuses the ILO of denial of justice insofar as, despite his repeated requests, it refused to forward the sanction proposal to the Joint Committee, as required by Article 12.2, paragraph 2, of the Staff Regulations, thereby causing him unnecessary and excessive harm. He adds that the impugned decision is equivocal. He is surprised to be blamed by the defendant for having sought to discuss matters with the Human Resources Development Department when the Staff Regulations actually encourage the informal settlement of disputes. He submits that the reference to the mobility allowance is "completely out of place" and points out that by August 2005 his luggage had still not been transferred from Abidjan to Benin.

With regard to moral injury, the complainant reiterates his arguments, alleging that he never had an opportunity to defend himself before the appropriate body and that he was not rehabilitated by the impugned decision. Under the heading of moral injury, he mentions the fact that he was kept in Dakar without any duties to perform and that he was transferred to the ISSA even though his skills were needed in the Social Protection Sector. He adds that his harassment grievance was not followed up, despite the fact that his predecessor in the Regional Office and another official had also complained about the same situation.

E. In its surrejoinder the ILO contends that the documents produced by the complainant's counsel constitute proof not of his status as an official but of the facilities he enjoyed as a result of the request by the Staff Union Committee for an exceptional arrangement to resolve his situation as an employee of that committee.

On the merits it accuses the complainant of feigning surprise at the Regional Director's complaints against him, considering that the Internal Auditor's report clearly refers to them. It alleges that he failed to comply with the statutory procedures and points out that, after prevarication, he withdrew his harassment grievance before the Joint

Panel.

## CONSIDERATIONS

1. The complainant was appointed Deputy Director of the ILO Regional Office for Africa in Abidjan in May 2001. According to the Organization, the Regional Director complained on 28 January 2003 to the Office of the Director-General about the behaviour of the complainant, alleging that he had acted outside his terms of reference and authority, had not kept her informed of his activities related to a social security project in Gabon and had favoured a consultant by recruiting him for the Gabon project. In more general terms, she allegedly accused the complainant of failing to give adequate attention to his duties as Deputy Director. For his part, the complainant reported to the Director-General in March 2003 what he considered to be serious shortcomings in the administrative and financial management of the Regional Office and accused his supervisor of psychological harassment and of undermining his authority over his subordinates. The Office of the Director-General referred these complaints to the Internal Auditor. After conducting an investigation in Abidjan from 30 April to 11 May 2003, the Internal Auditor handed in to the Director-General a report dated 11 July 2003, stating that neither of the two officials concerned could be accused of any financial fraud, that the breakdown in working relations between the Regional Director and the Deputy Regional Director made it desirable to transfer the complainant and that an appropriate sanction against him should be considered, in view of the fact that his allegations against his supervisor, worded in such a way as to suggest misconduct on her part, were not justified. The report also made recommendations to the Regional Director.

2. Following the report, the complainant, who had been transferred to Geneva to take up duties with the International Social Security Association, received a letter on 19 January 2004 indicating that the Office was proposing to apply the sanction of censure against him and inviting him to comment. The complainant met the Director of the Human Resources Development Department and the official in charge of legal affairs in that department on several occasions, requested and obtained a copy of the Internal Auditor's report, the conclusions of which he contested, and on 27 July 2004 referred his dispute with the Office to the Joint Panel.

3. In the event, the sanction proposal was not implemented and the Joint Panel issued its reasoned recommendation on 26 November 2004: on the one hand it considered that the complainant should be regarded as having withdrawn part of his grievance concerning the harassment he claimed to have suffered; and on the other hand it found that while the Office had not implemented its proposal of sanction and had not referred the matter to the Joint Committee, as required in a disciplinary procedure, it had not formally withdrawn the sanction proposal. It therefore recommended "that the Office confirm formally to the complainant in writing that the censure procedure against him has been withdrawn [and] that the file where the proposal of censure appears be destroyed".

4. By letter of 18 January 2005 the Executive Director of the Management and Administration Sector informed the complainant, who had retired on 1 October 2004, of the following decision:

"Although the Director-General does not share all the Joint Panel's conclusions regarding the Office's obligations arising from the disciplinary procedure initiated in your case, he is willing hereby to reconfirm that the proposed sanction against you has been withdrawn in view of your current status.

The Director-General would like to draw your attention, however, to the fact that he deems the Joint Panel's recommendation – regarding the file in which the sanction proposal appears – to be *ultra vires*. He nevertheless agrees that since the procedure has been withdrawn the documents concerning the proposal should be destroyed."

5. That is the decision impugned by the complainant, whose submissions are signed by a person who, according to the defendant, is not qualified to represent him, since he is neither a serving nor a former official of the Office who would be entitled as such to defend the complainant's case pursuant to Article 5(1) of the Rules of the Tribunal, and since he has not produced the power of attorney required by Article 5(2). The Tribunal rejects this objection to receivability: firstly, the parties' submissions show that the representative chosen by the complainant has indeed produced a power of attorney signed by the latter; secondly, even though it is correct that the representative was recruited by the ILO Staff Union for only a short time, a statement signed on 3 March 2005 on behalf of the Director-General indicates that he "was a staff member of the International Labour Office (ILO) in Geneva from 2 August 2004 to 31 December 2004". The complaint is therefore receivable.

6. In support of his claim to have the decision he impugns set aside, the complainant argues essentially that the sanction proposal was issued by the Office:

- in breach of the rights of the defence and of the safeguards available to him under Article 12.2 of the Staff Regulations;
- in breach of the Financial Rules whereby no staff member who provides information on fraud cases “shall be adversely affected unless the information was wilfully provided with the knowledge that it was false or with intent to misinform”;
- in breach of a general principle of law whereby an international organisation has the duty to treat members of its staff fairly and to protect their reputation.

He contends that the impugned decision does not repair the harm to his dignity, or its effects on his professional life and health. He expounds at length on the consequences of the provisional measures decided in the light of the Auditor’s report, which led to his being left in Dakar for several months without work while the rest of the staff of the Regional Office had returned to Abidjan.

7. The request for the impugned decision to be set aside must fail: the Director-General expressly excluded any disciplinary measure, and neither the withdrawal of the disciplinary procedure nor the removal from the Office’s files of the documents relating to the sanction proposal constitute decisions that are liable to cause injury to the complainant, regardless of the reasons on which they are based, since they cannot be said to affect his reputation. Furthermore, while the complainant alleges that the sanction proposal in itself caused him moral and material injury, the defendant rightly argues that the facts on which he relies in claiming compensation for material damage, concerning his retention in Dakar and the conditions of his transfer to Geneva, are unconnected with the impugned decision. In this case moral injury could arise only if the proposal to apply a sanction had been implemented, but such was not the case and there is no evidence in the submissions to suggest ill will or any disregard for the complainant’s dignity on the part of the Organization.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 17 May 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet