Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

106th Session **Judgment No. 2773**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. N.-S. against the Food and Agriculture Organization of the United Nations (FAO) on 30 May 2007, the Organization's reply of 14 September, the complainant's rejoinder of 11 December 2007 and the FAO's surrejoinder of 18 April 2008;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant, a Cameroonian national born in 1945, joined the FAO in 1987 as a Director at grade D-1 in Addis Ababa. In 1995 he was appointed FAO Representative in the Republic of the Congo. From May 1999 to February 2002 he was seconded to the United Nations (UN) where he served as Representative of the Secretary-General in Guinea-Bissau and Head of the United Nations Peace-building Support Office in Guinea-Bissau (UNOGBIS). When this secondment ended he was appointed FAO Representative in the Central African Republic.

On 24 September 2002 the Office of Internal Oversight Services of the United Nations (OIOS) issued a report on six instances of misconduct allegedly committed by the complainant while on secondment in Guinea-Bissau. He was informed by a memorandum of 16 December 2002 that the Director-General of the FAO had decided, in the light of this report, to suspend him from duty with pay pending investigation in accordance with FAO Staff Rule 303.0.3. However, on 21 February 2003 it was decided to discontinue this suspension.

On 25 April 2003 the Director of the Human Resources Management Division of the FAO forwarded the OIOS report to the complainant for comment. On 23 May the complainant supplied his written comments together with approximately 1,300 pages of documentation. On 21 August the Director sent the complainant a report commissioned by the Department of Political Affairs of the UN (DPA) on the mission subsistence allowances received by UNOGBIS staff and asked for his comments. The complainant supplied his comments in a letter of 20 September 2003.

After being temporarily suspended from duty, the complainant was informed by a memorandum of 25 November 2004 that he was being dismissed for misconduct pursuant to FAO Administrative Manual paragraph 330.2.41(a) as of 30 November 2004. On 19 January 2005 he lodged an appeal against this decision with the Director-General, who then dismissed it. On 4 June 2005 the complainant lodged an appeal to the Appeals Committee. The latter issued its report on 18 December 2006 after holding three hearings. It recommended that the appeal should be rejected because, in its opinion, all the counts of misconduct had been proved and the cumulative effect thereof merited the disciplinary measure of dismissal. The charges against the complainant were: (1) setting up an unauthorised funding system parallel to the Trust Fund in support of the activities of UNOGBIS and involving a private company MAVEGRO, in order that UNOGBIS could receive donors' voluntary contributions in cash in Guinea-Bissau; (2) misappropriation of resources and abuse of authority related to the MAVEGRO funds; (3) transmission to the UN of misleading information about local hotel rates leading to an overestimation of the mission subsistence

allowance; (4) fraud related to the purchase of three official vehicles; (5) unauthorised recruitment of consultants; and (6) unauthorised procurement of computers. The Director-General informed the complainant in a letter of 2 March 2007 that he had decided to accept the recommendation of the Appeals Committee and to dismiss his appeal. That is the impugned decision.

B. The complainant contends that his right to due process has been violated. He submits that due process requires that staff members be informed of the charges against them, in order that they may provide a response which must be examined carefully by the Organization before any disciplinary measure is adopted. He says that the FAO does not appear to have analysed the documents he submitted and that it never questioned him about them. The Organization simply based its position on the OIOS report, yet such a report cannot on its own serve as conclusive evidence against a staff member. Moreover, the complainant emphasises that this report was not forwarded to him by either the OIOS or the UN and that the FAO did not send it to him until several months after it had been issued. Furthermore, there is no evidence that the OIOS or the DPA were asked to review the case in the light of his responses.

The complainant draws attention to the fact that the Appeals Committee accepted the FAO's argument that the OIOS and DPA reports constituted *prima facie* evidence of his misconduct and thus shifted to him the burden of proving his innocence. The Committee also accepted the Organization's assertion that it had reviewed the "bulky" documentation he had supplied, and did not examine it itself. He further submits that the evidence was not examined at his hearing and, despite his specific request, no effort was made to question the two most important witnesses. He stresses that the Committee had to appraise systems and practices which were foreign to the FAO and indicates that the UN has certified that he served the UN with "honour and distinction" during his secondment to Guinea-Bissau. He holds that the Committee underestimated the tough political and military environment in which he was working.

With regard to the first charge made against him, the complainant states that, even though the Committee concluded that UN Headquarters knew of the existence of the mechanism for handling contributions, he was criticised for not exercising proper control over financial operations, not keeping records and not ensuring accurate reporting, which was tantamount to altering the charge against him. He draws attention to the evidence he submitted in this connection and observes that the Committee simply assumed that he was responsible for monitoring each and every transaction, which was not the case.

With regard to the charge of misappropriation of funds, the complainant points out that the Committee criticised him for negligence and unwillingness to take responsibility and ensure transparent management, thereby altering the original charge. Furthermore, the evidence he submitted in this connection – in particular regarding some donors' approval of the transactions – was not discussed at the hearings but was rejected by the Committee because, among the hundreds of transactions carried out, just two receipts from a hotel raised doubts as to their authenticity.

According to the complainant, the Committee's conclusions regarding mission subsistence allowances stem from a misunderstanding of how their rates are calculated, his obligations and the sequence of events. He gives his own detailed version of events.

With regard to the charges in connection with the purchase of vehicles and computers, the complainant notes that the Committee criticised him for not monitoring the transactions more closely; these were not, however, the original charges. He further contends that the purchase of vehicles, which took place while he was out of the country, had been approved by the DPA. The Committee concluded that he was not authorised to recruit consultants, yet the disputed recruitments had been tacitly approved by Headquarters.

He explains that, contrary to what was assumed, he had not been solely responsible for the decisions at issue and comments that none of the other persons mentioned in the OIOS report as being responsible or an accomplice has been disciplined. In this connection he points out that the mission's staff included an Administrative Officer and an

Administrative Assistant. He feels that he has been treated as a scapegoat and asserts that the Committee's position appears to be arbitrary and discriminatory.

The complainant asks the Tribunal to quash the Director-General's decision of 2 March 2007, to order his reinstatement with retroactive effect from 30 November 2004 and to grant him three years' salary to compensate for loss of earnings and damage to his reputation. He also claims 50,000 United States dollars for the violation of his right to due process and 20,000 dollars in costs.

C. In its reply the FAO asserts that there is ample, clear and unequivocal evidence that the complainant engaged in behaviour contravening the Staff Regulations and Rules as well as the Standards of Conduct of the International Civil Service. It states that the OIOS report provided sufficient evidence for a *prima facie* case of misconduct against the complainant and that there was therefore no need for further investigation.

The Organization contends that the complainant's due process rights were respected at all stages of the case. Moreover, the OIOS carried out a comprehensive and systematic examination of the financial administration of UNOGBIS and interviewed all the persons concerned, including the complainant. The OIOS and DPA reports were sent to him and he was afforded the opportunity to respond extensively to both of them. The decision to impose the disciplinary measure of dismissal was taken only after due consideration had been given to the complainant's response and the UN had been consulted. The Appeals Committee had itself examined the documentation submitted by the complainant and had heard him and a senior UN official.

The FAO submits that the complainant's interpretation of the Committee's report is clearly mistaken. The Committee concluded unambiguously that the complainant's misconduct warranted dismissal. Contrary to the complainant's allegations, it did not attempt to reduce the charges, and indeed it had no such mandate.

The Organization recalls that the OIOS found that the complainant had neglected his fiduciary duty to the UN by receiving contributions through MAVEGRO, thereby contravening established financial rules and procedures. It explains that the silence of UN Headquarters cannot be construed as tacit agreement and that the "MAVEGRO system" was not fully uncovered until the complainant's successor took up his duties. Moreover, the fact that some donors approved payments to MAVEGRO does not prove anything, since they had been misled. The OIOS concluded that there was sufficient evidence that the purpose of the non-transparent management of funds paid to MAVEGRO was to enable the complainant to misappropriate funds for his personal benefit. The FAO rejects the complainant's explanations to the effect that he was not responsible for the financial management of UNOGBIS.

The Organization stresses that the OIOS adduced evidence that the complainant had provided UN Headquarters with false information such as forged hotel bills, in order to claim a bigger mission subsistence allowance. The OIOS also produced evidence regarding fraud in relation to the purchase of vehicles, the unauthorised recruitment of consultants and the unauthorised purchase of computers. The FAO rejects the complainant's arguments concerning these accusations.

D. In his rejoinder the complainant presses his pleas. He points out that the FAO has not replied to the fundamental objection that the OIOS and DPA reports contain only allegations based on preliminary investigations and that, before it issued its report, the OIOS had never had access to the hundreds of pages of documentation that he subsequently produced. Moreover, having made its own analysis of these reports, the UN exonerated its staff of wrongdoing in connection with the operations of UNOGBIS and with the payment of mission subsistence allowances; in his opinion, this raises a question as to the equal treatment of staff and the underlying reason for his dismissal. The complainant further notes that the FAO omitted to mention that upon receipt of the OIOS report, it ordered an audit of his management of the Organization's office in the Central African

Republic and that, having found not one shred of evidence of any irregularity, it had reversed its decision to suspend him.

The complainant emphasises that UNOGBIS operations formed the subject of frequent reports to the Security Council and the DPA, in addition to the daily reports to the UN Secretariat.

He maintains that UNOGBIS never received any cash contributions and did not have a bank account in Guinea-Bissau. He had helped to set up the Trust Fund to receive Member States' contributions. He states that he never managed the funds paid to MAVEGRO.

E. In its surrejoinder the Organization maintains its position. It notes that the complainant persists in wrongly characterising himself as a mere "facilitator" with regard to the receipt of funds through MAVEGRO. It contends that the complainant is trying to shift all the blame to the Administrative Assistant by feigning ignorance of the details of the transactions. Yet it was the complainant's secretary who alone effected these transactions and witnesses say that they saw her destroying documentation related to MAVEGRO funds.

The FAO also produces a cleaner copy of the receipts whose authenticity is questioned.

CONSIDERATIONS

1. The complainant was recruited by the FAO in 1987 as a Director at grade D-1. He served in Addis Ababa before being appointed FAO Representative in the Republic of the Congo in 1995.

As from May 1999 he was seconded to the UN to serve as Representative of the Secretary-General in Guinea-Bissau and Head of the UNOGBIS which had just been set up to promote stronger democratic institutions in a country scarred by political turmoil.

The complainant held this office until February 2002, when he returned to the FAO and was appointed its Representative in the Central African Republic.

2. However, after some irregularities had been discovered by his successor as Head of UNOGBIS, the financial management of the mission during the period when it had been headed by the complainant was investigated by the OIOS at the request of the DPA.

In its report issued in September 2002, the OIOS found that the complainant had engaged in serious acts of misconduct in the exercise of his functions. Additional information on one of the issues covered by the OIOS report was supplied in June 2003 in a consultant's report commissioned by the DPA on the mission subsistence allowances received by UNOGBIS staff, which came to the same conclusions.

3. These two reports were transmitted to the Organization. After being temporarily suspended from his duties as FAO Representative in the Central African Republic, then informed of the proposed disciplinary measure against him, the complainant learnt through a memorandum of 25 November 2004 that he was to be dismissed for misconduct as of 30 November 2004.

4. Since the appeal he lodged against this decision with the Director-General was unsuccessful, the complainant submitted the case to the Appeals Committee in accordance with Staff Rule 303.1.313. In the report it issued on 18 December 2006, the Committee recommended the rejection of the appeal. The Director-General then confirmed the complainant's dismissal by a decision of 2 March 2007.

That is the decision which the complainant is challenging before the Tribunal. He seeks the quashing of this decision and his reinstatement, and he also brings various claims for compensation.

5. The complainant has requested the convening of an oral hearing. However, in view of the extensive and extremely clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and that there is therefore no need to grant this request.

6. In support of his claims the complainant first submits that in imposing the disputed disciplinary measure the Organization violated his due process rights. However, it is clear from the evidence on file that none of the numerous arguments he presents in this connection can be accepted.

7. The complainant was interviewed by the authors of the OIOS report who, contrary to his submissions, questioned him impartially and thoroughly and were not obliged to permit him to confront the other witnesses. He subsequently received both this report and that concerning mission subsistence allowances and was thus in a position to reply to them, which he did by sending his written comments to the FAO on 23 May and 20 September 2003, after being granted the additional time he had requested for that purpose. In accordance with Manual paragraphs 330.3.25 and 330.3.26 he was then able to provide the Organization with his comments on the proposed disciplinary measure against him, and in this connection he met the Director of the Office for Coordination of Normative, Operational and Decentralized Activities on 2 September 2004. Lastly, all his due process rights were respected when his appeal was examined by the Appeals Committee, which heard him at length and which, contrary to his submission, was not obliged again to question witnesses who had already been interviewed by the OIOS investigators.

8. The complainant submits that the FAO and the Appeals Committee immediately endorsed the findings of the two above-mentioned reports without ascertaining their validity, that they thus wrongfully reversed the burden of proof to his disadvantage and that they did not really give any consideration to his replies. Generally speaking, he holds that the Organization displayed prejudice against him and from the outset prejudged the reality of the misconduct of which he was accused, thus singling him out as a “sacrificial lamb” or “scapegoat”.

9. While internal investigative reports cannot be the sole basis for disciplinary action against a staff member, they may nevertheless serve as a basis for initiating disciplinary proceedings if they yield indications of irregularities justifying this (see, in this respect, Judgment 2365, under 5(e)). When the organisation concerned initiates proceedings in the light of such reports, it is not itself obliged to repeat all the investigations recorded in these documents, but must simply ensure that the person in question is given the opportunity to reply to the findings they contain so as to respect the rights of defence. As has been stated above, this was done in the instant case.

10. Furthermore, when a report of this nature contains well-substantiated conclusions calling into question the conduct of the staff member under investigation, the fact that the latter should be asked to explain this conduct does not in itself constitute a reversal of the burden of proof. That would occur only if an organisation were to rely on unsubstantiated allegations against that person.

11. Similarly, there is no convincing support for the complainant's contention that the Organization did not make any effort to examine the comments and documents he had submitted; indeed, the mere fact that it did not deem this evidence sufficiently compelling to end the proceedings obviously does not prove that it failed to take it into consideration. As for the Appeals Committee, it plainly strove to examine the case with due care, holding no less than three hearings. In fact, the only criticism which could be made of the Organization's conduct of the proceedings is that they were regrettably slow and dragged on for almost four years in total. However, this slowness can be partly explained in the instant case by the time needed thoroughly to check the validity of the charges against the complainant and to study the particularly abundant documentation he had supplied.

12. Nor has the Tribunal found any evidence on file to suggest that the Organization displayed prejudice against the complainant.

The circumstance which the complainant cites in support of this contention, namely that he was suspended from his duties on the basis of Staff Rule 303.0.3, cannot be construed in that way, because such a suspension is only an interim, precautionary measure which does not at all prejudge the outcome of the proceedings (see, for example, Judgments 1927, under 5, and 2365, under 4(a)). Moreover, the Tribunal does not see why the Organization would have been led to neglect its duty of objectivity when examining the facts of the case and it notes that the complainant does not provide any clarification in this respect.

13. With regard to the merits of the disciplinary measure imposed, the complainant denies the substance of all the charges made against him and, as far as some of them are concerned, he subsidiarily denies that he was personally responsible for the actions taken or that they constituted a disciplinary or serious offence.

He was accused of misconduct on six counts which the Tribunal, like the Appeals Committee, will examine in turn.

14. First, it was alleged that the complainant had set up a parallel funding system, which was used in complete contravention of the financial provisions applicable to the UN, to receive third parties' donations in place of the Trust Fund in support of the activities of UNOGBIS, which had been established by the UN for that purpose.

Under this parallel funding system, donations were channelled through a local commercial company, MAVEGRO. The complainant justifies recourse to this system by the collapse of the banking system in Guinea-Bissau and the cumbersome procedures of the UN Fund, which made it necessary to devise such a mechanism for carrying out projects supported by UNOGBIS. According to him, the establishment of this system fulfilled the wishes of the diplomatic and consular missions of certain States which wished to contribute, through local cash payments, to the organisation of seminars or similar events designed to promote the restoration of democratic institutions in Guinea-Bissau.

While these considerations might have made it legitimate for UNOGBIS, in conformity with the applicable rules, to join in initiatives financed by these donor States, they certainly could not justify the Office itself collecting funds otherwise than through the official channel. It is, however, clear from concordant witness statements gathered by the OIOS and from numerous items of evidence of probative value contained in the file – including several agreements signed by the complainant himself – that UNOGBIS did receive payments from donors through MAVEGRO.

15. It is true that, as the Appeals Committee noted, the DPA Executive Office had been alerted to the existence of a funding mechanism involving external partners' contributions for projects supported by UNOGBIS, and had raised no objection at the time. However, the tacit agreement to these arrangements by services at Headquarters was the result of the misleading picture which the complainant had painted of them. He had always given them the impression that, within this system, UNOGBIS acted only as a "facilitator" of operations and merely provided technical assistance for the implementation of projects, without taking any part in their funding. Moreover, the Tribunal notes that the complainant himself pointed out in the comments he submitted on 23 May 2003 in response to the OIOS report, that the DPA had consented to such arrangements with the express proviso that UNOGBIS would not receive direct contributions from donors. This essential condition was not, however, respected because, as stated above, UNOGBIS did in fact receive funds channelled through MAVEGRO.

16. It must be emphasised that, quite apart from the fact that the breach of the applicable financial rules was by definition unlawful, this parallel funding system resulted in the financial services of the UN being deprived of any control over the use of monies paid to UNOGBIS and therefore made the misappropriation of funds possible.

In this connection, the misconduct consisting in the establishment of these arrangements is all the more serious for the fact that funds were withdrawn from MAVEGRO in cash and that, contrary to the

complainant's submissions, no rigorous and transparent accounts were kept of these disbursements.

Furthermore, it is clear from the file that the complainant had assured some donor countries' representatives that the donations to UNOGBIS which were channelled through MAVEGRO were subject to audit by UN Headquarters, which was completely untrue. As such a statement might have led donors to be less vigilant with regard to the use of their financial contributions, it clearly exacerbated the risk of a misappropriation of funds.

17. The second charge against the complainant was, precisely, that he had abused his authority by managing the contributions thus collected in order to misappropriate funds.

According to the findings of the OIOS investigations, when UNOGBIS had organised seminars with the financial assistance of Germany and the Netherlands, it had received contributions from these countries' embassies which were far in excess of the actual expenditure on these events as invoiced by the service-providers concerned.

In order to deny the existence of these disparities which, if proven, would clearly suggest the embezzlement of the sums exceeding actual expenditure, the complainant produced bills from the main service-provider (the Bissau Hotel, where most of these seminars were held) which were supposed to tally with additional expenditure which the OIOS had failed to take into consideration.

However, having examined the copies of these bills contained in the file, the Tribunal finds that, as the Appeals Committee had already noted with regard to two of them, the signature and stamp on them have plainly been artificially replicated from an original bill made out by the hotel for another service. In these circumstances and whatever the reason for this serious irregularity, these documents obviously do not present sufficient guaranties of authenticity to have any probative value.

Furthermore, the complainant's contention that the embassies of Germany and the Netherlands were satisfied with the financial reports transmitted to them and that one of them had even issued UNOGBIS a

formal receipt likewise cannot be regarded as relevant evidence in this instance. As stated above, the services of these diplomatic missions had received false assurances that the donations would be subject to the usual audit by UN Headquarters, as a result of which they may well have been less vigilant in checking the accounts presented to them.

18. At all events the Tribunal notes that, even supposing that the complainant could be given the benefit of the doubt as to whether he deliberately took part in the misappropriation of funds, the setting up at his behest of an unsupervised funding system which clearly made such misappropriation possible was in itself an act sufficiently imprudent for it to constitute a serious disciplinary offence.

19. Thirdly, the complainant was accused of supplying UN Headquarters with incorrect information about local hotel rates which led to the mission subsistence allowance paid to UNOGBIS staff members being set at a much higher level than the real expenses borne by these people.

According to the concordant findings of the OIOS report and the report specially drawn up on the subject, in February 2000 the complainant had indicated rates charged by the main hotel patronised by UNOGBIS staff members which did not take account of the special rate from which all of them in fact benefited. In addition, with regard to his own particular case, the complainant had likewise declared rent more than double that which he had actually been charged when he moved to another hotel in July 2000.

In order to deny that he thus defrauded the UN, the complainant submits that the preferential rates charged by these hotels had not in fact been applied until the autumn of 2000, so that the information he had sent to UN Headquarters in February and July of that year had been correct.

However, even if the prices indicated had indeed been correct at the time of transmission, it would obviously have been incumbent upon the complainant to inform Headquarters of the subsequent introduction of preferential rates for UNOGBIS staff members as soon

as they came into force. Bearing in mind his level of responsibility and the content of his earlier correspondence on this subject, the complainant could not have been unaware of the fact that the amount of the mission subsistence allowance paid to UNOGBIS staff members depended on the actual cost of their accommodation. Consequently, by failing to report this change in rates, the complainant in any case harmed the UN's interests by fraud.

Furthermore, the fact that the complainant personally benefited from the overpayment of this allowance until the end of his assignment in February 2002 makes his conduct particularly reprehensible.

20. Fourthly, the complainant was accused of defrauding the UN in connection with the purchase of three official vehicles.

According to the OIOS report, in order to have a luxurious car which he would probably not have been allowed to buy, the complainant had presented Headquarters with a fraudulent pro forma invoice containing a false description of the model and value of each of the three vehicles purchased. In addition to this ploy, the supplier's invoice listed various spare parts, the delivery of which was in fact purely fictitious.

Once again the Tribunal can only find that these facts, although strenuously denied by the complainant, are clearly established by precise and credible witness statements as well as various items of documentary evidence.

The complainant's contention that he was absent from Guinea-Bissau when the vehicles were delivered is no proof whatsoever that he did not initiate this fraud, which had certainly been planned beforehand.

In addition, and contrary to the complainant's submissions, the fact that the overall expenditure was within the limit authorised by Headquarters for the purchase of three vehicles does nothing to reduce the harm to the UN's financial interests, as this overall limit would certainly have been lower if it had been based on a genuine pro forma invoice.

21. The fifth disciplinary charge stemmed from the fact that UNOGBIS, under the complainant's responsibility, had recruited consultants without the prior authorisation of Headquarters as required by the financial provisions applicable to the UN.

The substance of these unlawful acts is clearly established by written submissions showing that several consultants were hired on contracts signed on behalf of UNOGBIS and financed by funds from MAVEGRO.

While these acts admittedly seem to be less serious than those mentioned earlier, they nevertheless likewise constitute a disciplinary offence. Apart from being a formal breach of the applicable rules, which was of course unacceptable *per se*, this practice effectively exposed the UN to the risk of incurring liability in the event that persons on such contracts were involved in incidents in certain emergency situations.

Furthermore, the complainant's contention that – with one exception – he did not personally sign these contracts does not relieve him from his responsibility for the recruitments in question as they were made with his approval.

22. Lastly, it was alleged that the complainant at least agreed, if not decided, that UNOGBIS should purchase information technology equipment – namely 25 computers including two laptops – although the authority for such procurement had not been delegated to him by Headquarters.

This violation of the existing rules, the substance of which is once again established, seems all the more reprehensible for the fact that the written submissions show that in July 2000 the DPA had expressly reminded the complainant in a fax that the UN's Procurement Division was alone entitled to contract the purchase of the equipment in question.

Moreover, the evidence on file shows that these computers were bought from a company selected on criteria of dubious objectivity.

Thus, even if, as the Appeals Committee noted, the complainant did not have direct authority over UNOGBIS procurement, he was at

least guilty of serious negligence by not, as head of mission, ensuring compliance with the most elementary rules applicable in this sphere.

23. The Tribunal considers in the light of the findings set out in the foregoing considerations that the facts on which the disputed disciplinary measure was based have been established.

24. Nor can the imputability of these acts to the complainant be seriously disputed.

On the one hand, most of the acts of which he is accused directly involve his personal integrity.

On the other hand, although the complainant endeavours to place responsibility for some of the fraudulent acts on certain former members of his staff, the Tribunal will not accept this argument. Whilst it is clearly not the duty of the head of a mission like UNOGBIS personally to handle all aspects of its administrative and financial management, he or she is nonetheless responsible for ensuring that its services do not engage in any fraud or irregularity in the course of this management, failing which he or she will be guilty of negligence at the very least. Moreover, it is obvious in this case that the members of staff in question were not the prime instigators of the principal fraudulent acts which have been revealed and in fact were usually simply obeying the complainant's instructions.

25. In this connection the Tribunal also notes that the fact – which greatly surprises the complainant – that the UN did not consider it necessary to initiate proceedings against the other staff members whose conduct was criticised by the OIOS has no bearing on the lawfulness of the measure applied to the complainant in respect of the acts of which he is personally accused, since they are proven and imputable to him (see for example Judgments 207, 1271, 1977 or 2555).

26. Nor of course may the complainant rely on the possible lack of vigilance displayed by services at UN Headquarters with regard to the fraud, negligence or irregularities found to have occurred in

the financial management of UNOGBIS in order to shed his own responsibility for the commission of these various fraudulent acts. At the most this responsibility might be lessened if, as he submits, these services had tacitly and with full knowledge of the facts approved the setting up of a funding system parallel to the Trust Fund. However, as was stated earlier, this was certainly not the case.

27. The complainant's acts clearly constituted disciplinary offences.

On this point, the complainant submits that the Appeals Committee distorted the charges that had been made against him during the initial phase of proceedings, and ultimately found him guilty only of negligence based on unsatisfactory performance of his duties rather than conduct punishable by a disciplinary measure.

The Appeals Committee's recommendation cannot, however, be interpreted thus. It is true that, with regard to some counts of misconduct, the Committee considered that the complainant could not be accused with any certainty of dishonesty but only of negligence and recorded that he "had not shown overall good judgement" in the financial management of UNOGBIS; but negligence is in itself a disciplinary offence, and the Committee's report, which expressly stated that "each count was proved", clearly indicates that it considered that the acts in question amounted to conduct punishable by a disciplinary measure and not to unsatisfactory performance. In addition, even if the Committee had intended formally to reclassify these acts as less serious offences than those initially specified, such a practice would not by any means have been wrong – contrary to the view apparently taken by the complainant (see, for example, Judgment 1085, under 2).

28. Lastly, with regard to the issue of whether the measure of dismissal duly reflects the seriousness of the offences committed, the Tribunal points out that according to firm precedent, as recalled in particular in Judgments 207 and 1984, the disciplinary authority has discretion in determining the severity of a sanction justified by a staff member's misconduct, provided that the principle of proportionality is

respected. In view of the serious nature of the above-mentioned acts, and although the complainant had always been complimented on his professional abilities throughout his career, the Director-General of the FAO clearly did not exceed his discretionary authority in deciding to dismiss the complainant. The principle of proportionality has not therefore been breached.

29. It follows from the foregoing that there is no merit in the complainant's request that the impugned decision should be quashed and consequently his other claims cannot be allowed either.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Mary G. Gaudron
Dolores M. Hansen
Patrick Frydman
Catherine Comtet