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

111th Session **Judgment No. 3024**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. T. against the International Labour Organization (ILO) on 26 November 2009 and corrected on 1 March 2010, the Organization's reply of 31 May, the complainant's rejoinder of 6 August, the ILO's surrejoinder of 8 November 2010, the documents produced by the Organization on 7 January 2011 at the Tribunal's request, the complainant's comments thereon of 8 February and the ILO's final observations of 7 April 2011;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

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, who has now dual Russian and Swiss nationality, was born in 1946. From 17 January 1977 until 31 January 1982 he worked for the International Narcotics Control Board (INCB), and during that period he was a participant in the United Nations Joint Staff Pension Fund (UNJSPF, also referred to hereinafter as "the Fund"). He was then a national of the Union of Soviet Socialist Republics (USSR). When he ceased working for the INCB, the sum of

18,198 United States dollars, representing the actuarial equivalent of his accrued pension rights, was transferred to the USSR Social Security Fund under an agreement concluded between the USSR and the Fund.[*] A balance amounting to 20,405.07 dollars was retained by the Fund. From 1 February 1982 the complainant was employed outside the United Nations system.

The Regulations of the UNJSPF were amended in December 1982. The new version, which entered into force on 1 January 1983, stipulated that the restoration[**] of prior contributory service pursuant to Article 24 of the Regulations was possible only if the period in question amounted to less than five years. On 8 November 1985 the United Nations Administrative Tribunal rendered its Judgement No. 360 in a case concerning the restoration of prior contributory service which had been denied on the basis of the Regulations as amended. The Tribunal held that the Regulations had been amended only with respect to the future. Hence the right to restoration of a period of prior contributory service of more than five years could be invoked by former participants who re-entered the Fund after the amendment of the Regulations. By a letter of 27 March 1986 the UNJSPF forwarded to the Secretary of the ILO Staff Pension Committee – pursuant to a decision taken by the Standing Committee of the United Nations Joint Staff Pension Board on 28 January 1986 – a list of officials of the International Labour Office, the Secretariat of the ILO, whose circumstances were analogous to those of the applicant in the case that had led to Judgement No. 360, namely those who had been readmitted to the Fund after 1 January 1983 and whose most recent period of prior contributory service ending before that date had been for at least five years. The letter indicated that the Secretary of the Pension Committee should notify the persons concerned that they could submit an application for restoration within one year from a specifically defined date. A second list identified officials who had

[*] The UNJSPF had also concluded a similar agreement with the Ukrainian and Byelorussian Soviet Socialist Republics.

[**] The term “restoration” means the inclusion in contributory service of the prior contributory service of a former participant who again becomes a participant.

already had their most recent period of prior contributory service of less than five years ending prior to 1 January 1983 restored, or who were in the process of having it restored. The UNJSPF drew attention to the fact that the two lists might be incomplete. It also indicated that, as the lists contained only the names of officials who had re-entered the Fund between 1 January 1983 and the end of the 1985 fiscal year, where the renewed participation of officials was reported subsequently to the Fund, it was the responsibility of the Secretary of the staff pension committee of each member organisation of the UNJSPF to identify and notify the officials concerned of their option to restore. A model information note that could be used by the ILO was annexed to the letter.

In 1990 the complainant applied for a post of director at the ILO. The personal history form that he filled out at the time mentioned the period during which he had been employed at the INCB. On 1 April 1991 he was appointed to the above-mentioned post and was readmitted, under his fixed-term contract, to the UNJSPF with a new membership number. After consulting the Fund, he decided not to submit the application form for restoration of prior contributory service that had been sent to him when he took up his duties.

By a fax dated 3 October 1991 the UNJSPF provided the Secretary of the ILO Staff Pension Committee with a list of ten ILO officials – nationals of the USSR or of the Ukrainian or Byelorussian Soviet Socialist Republics – who had re-entered the Fund and who, pursuant to a decision taken by the Pension Board in July 1991, were also being given the option of requesting the restoration of a period of prior contributory service ending before 1983. The Secretary was invited to inform the persons concerned of that possibility, using the attached model letter, and to advise them that their request should be received no later than 30 September 1992. As the complainant's name was not included in the list in question, he was not contacted.

On 22 May 2007 ILO staff received an e-mail informing them that participants in the Fund who had previously been ineligible to elect to restore periods of prior contributory service of more than five years could do so with effect from 1 April 2007. The complainant then

submitted a request to that effect to the ILO Staff Pension Committee which, after consulting the UNJSPF, rejected it in the light of the practice adopted pursuant to aforementioned Judgement No. 360 on the ground that it had not been submitted within the time limit of one year from the date of readmission to the Fund. On 18 June 2007 he requested a review of that decision, pointing out that when he re-entered the Fund in 1991 the ILO had not informed him of Judgement No. 360. His request was forwarded to the UNJSPF and rejected on the same ground on 10 September 2007.

In a letter dated 22 October 2007 the Secretary of the ILO Staff Pension Committee informed her line manager, the Chief of the Security, Social Protection, and Health Branch, that, in her view, the ILO Staff Pension Committee had not systematically informed the officials concerned of the implications of Judgement No. 360, contrary to the instructions given by the Fund. She added that she intended to request the Fund to ask the consulting actuary to calculate the exact amount that would be due to restore the complainant's period of prior contributory service, and she recommended that the ILO recognise that it had committed an administrative error. On 7 December the complainant sent a minute to the above-mentioned Chief of Branch, expressing the hope that a solution would be found rapidly. In a minute of 12 December 2007 he requested the Director of the Human Resources Development Department (HRD) to look into the matter promptly. He received no reply to either of these requests.

On 19 March 2008 the complainant filed a grievance with the Joint Advisory Appeals Board and on 31 March he retired. The Board issued its report on 28 May 2008, concluding that there had been a "misunderstanding" between the complainant, who was convinced that he had filed a grievance pursuant to chapter XIII of the Staff Regulations – concerning conflict resolution – and the Administration, which considered that, as he had not referred to chapter XIII in his minute of 12 December 2007, he had not filed a formal grievance. The Board took the view that "administrative remedies" must be exhausted before the matter could be referred to it, and it recommended that the file be submitted to HRD so that that department could "take a decision on this case without delay in accordance with chapter XIII" referred to

above. As the Director-General approved this conclusion and recommendation on 22 July, the case was referred to HRD, which was to issue its response within three months. In the meantime, on 7 April 2008, the UNJSPF had informed the Secretary of the ILO Staff Pension Committee of the cost for each party of restoring the complainant's contributory service for the period from 1977 to 1982.

As three months had elapsed since 22 July 2008 and he had received no response, the complainant filed a second grievance with the Joint Advisory Appeals Board on 4 November 2008. In its report of 29 June 2009 the Board recommended to the Director-General that he "negotiate directly with the Fund administration with a view to reaching a solution that reflects shared responsibility between the Office and the Fund and which is acceptable to the three parties". By a letter of 31 August 2009, which constitutes the impugned decision, the Executive Director of the Management and Administration Sector informed the complainant that the Director-General had decided to accept that recommendation, although he did not share the Board's view that the Secretary of the ILO Staff Pension Committee should have been able to infer from the content of the personal history form completed by the complainant at the time of his recruitment that he had previously been a participant in the Fund, and that the Office was therefore at least partly responsible. While he considered that the complainant was to some extent responsible, the Director-General criticised the UNJSPF in particular for failing to include the complainant's name in the list that it had sent to the Organization in 1991. After reviewing the various fruitless steps taken vis-à-vis the Fund, the Executive Director informed the complainant that the Director-General, who was "determined to continue assisting [him]", had instructed his representative on the above-mentioned Staff Pension Committee to place his case on the agenda of the next session of the Committee so that the latter could perhaps refer it to the Standing Committee of the Fund at its meeting in July 2010.

B. The complainant contends that, owing to negligence on the part of the ILO – as admitted by the Secretary of the Organization's Staff Pension Committee – the amount of his retirement pension is almost

30 per cent lower than the amount he would have received had the restoration of his UNJSPF contributory service between 1977 and 1982 been authorised. He criticises the ILO for dragging its feet, noting that although the Fund informed it on 7 April 2008 of the measures to be taken, it has yet to take the necessary steps. The Organization thus prevented him from regularising his situation before his retirement. As he sees it, the ILO is not determined to continue assisting him but seems, on the contrary, to wish "to bury the affair in order to evade responsibility".

He asserts that the general principles applicable to the international civil service have been breached and that the Organization has caused him severe damage by failing in its duty to inform. Citing Judgment 2768 of this Tribunal, he contends that, given the extremely complex nature of the legal circumstances involved, the ILO had a greater duty of care towards him which it failed to discharge. In this regard, he points out that upon being recruited by the ILO he was in fact issued with an application form for restoration of prior contributory service under Article 24 of the Regulations of the Fund. At the time, however, not only was he precluded by the terms of that article from claiming such restoration, but he was also left unaware of the consequences of Judgement No. 360 of the United Nations Administrative Tribunal, contrary to the instructions contained in the Fund's letter of 27 March 1986.

The complainant criticises the ILO for not having taken steps to ensure that the list sent to it by the Fund on 3 October 1991 was exhaustive, and he claims to be a victim of discriminatory treatment, since the Organization only permitted officials whose name appeared on the list to benefit from the restoration of prior contributory service.

According to the complainant, the arguments adduced by the ILO in its decision of 31 August 2009, whereby it seeks to "shift the blame" to himself and the UNJSPF, are inadmissible. He considers in particular that, by mentioning in his personal history form the period during which he had previously been employed in the United Nations system, he had done "everything that could reasonably be expected of him to inform his employer".

The complainant asks the Tribunal to set aside the impugned decision insofar as the Director-General "refuse[d] to take the steps requested by the Fund". He principally also asks the Tribunal to order the ILO to take the requisite steps to permit the restoration of his prior contributory service between 1977 and 1982, and to pay him the difference between his current pension and that to which he will be entitled after the process of restoration – i.e. a monthly amount of 2,698.80 Swiss francs – with effect from 1 April 2008. Subsidiarily, he requests that this amount be paid for the period from 1 April 2008 until the last day of the month preceding the delivery of the judgment in the present case, and the payment of the "capitalised total sum of a life annuity" corresponding, on the one hand, to the above-mentioned amount payable from the month in which the judgment is delivered and, on the other, to the difference between the "survivor's pension" to which his wife would currently be entitled and that to which she would be entitled had the restoration in question been authorised, i.e. 1,349.50 francs per month. Also subsidiarily, he asks for payment of the above-mentioned amount in respect of the period from 1 April 2008 until the last day of the month preceding the delivery of the judgment in the present case, the payment of the amount from the month in which the judgment will be delivered and a monthly payment of 1,349.50 francs to his wife as from the month following his decease. In addition, he seeks fair compensation for the moral injury sustained and 20,000 francs in costs.

C. In its reply the Organization argues that the complaint is irreceivable *ratione materiae* because, insofar as the complainant is challenging the Fund's rejection of his request for restoration of his prior contributory service, the Tribunal lacks jurisdiction. It also holds that the complaint is irreceivable *ratione temporis* because the complainant first submitted that request only in 2007, i.e. 16 years after re-entering the Fund.

On the merits, the ILO states that the Fund shares responsibility with the complainant for the fact that the request was submitted out of time. It seeks to demonstrate, inter alia, that it was unable to draw an automatic link between Judgement No. 360 and the information

contained in the personal history form completed by the complainant. It points out that the versions of the UNJSPF Regulations published following the delivery by the United Nations Administrative Tribunal of its Judgement No. 360 failed to mention that officials who had resumed their participation after 1 January 1983 were now entitled to submit an application for restoration, and that the Fund left it to member organisations to inform the participants concerned, although they were not in possession of the necessary information. According to the Organization, its duty to inform concerned only those officials who had been readmitted to the Fund between the end of the 1985 fiscal year and 27 March 1986, the date of the letter by which the Fund informed the ILO of the consequences of Judgement No. 360.

According to the defendant, the complainant ought to have reported, at the time of his recruitment by the Office, that he had previously been a participant in the UNJSPF by completing the application form for restoration of prior contributory service. It infers from the fact that the Fund informed the complainant at the time that it was not possible to restore his prior contributory service that this reply was erroneous – which would render the Fund liable – or else that he could not benefit from the practice adopted pursuant to Judgement No. 360. It argues that the list supplied by the UNJSPF in October 1991 was "described as exhaustive" which means, in its view, that it had no reason to cast doubt on its content and that it therefore did not fail in its duty to inform the complainant. It explains that, since the complainant's name did not appear on the list, his factual situation differed from that of the ten colleagues who had been identified by the Fund, and his argument to the effect that he was subjected to discriminatory treatment must therefore be dismissed.

D. In his rejoinder the complainant states that the purpose of his complaint is to obtain redress for the injury he suffered as a result of the Organization's failure to fulfil its duties towards him as an employer, a question which clearly falls within the jurisdiction of the Tribunal. He adds that it is the "violation of the duty to inform from 1991 to 2007" that constitutes the basis of his complaint, which is therefore receivable *ratione temporis*. He argues that the ILO cannot

invoke a time bar since it was the Organization itself which left him unaware of his right to have his prior contributory service restored. He points out that it accepted the possibility of restoration in principle on 10 September 2007 and that it determined the relevant conditions in its letter of 7 April 2008.

On the merits, the complainant reiterates his arguments. He maintains that he committed no fault and emphasises that the information contained in his personal history form was "duly recorded".

According to him, the Organization bears liability in this case because it ought to have notified him of the decision taken by the Pension Board in July 1991 to offer officials in his situation the option of applying for restoration. He asserts that if, at the time of his recruitment, it had sent him an information note, as had been suggested in the letter of 27 March 1986, he would certainly have made enquiries. Moreover, he infers from that letter that the ILO was under an obligation to identify all officials who had been readmitted to the Fund after the end of the 1985 fiscal year and who were eligible to benefit from the practice adopted pursuant to Judgement No. 360. He argues that the Organization cannot justifiably invoke the Fund's alleged failure to inform it correctly in order to shirk its duties towards him. As he sees it, the ILO was in possession of all the necessary information, and if it does not accept that view it should bring an action for compensation against the Fund. He disputes the assertion that the list issued by the Fund in October 1991 was described as exhaustive.

Lastly, the complainant specifies the amount of his claims for payment of the "capitalised total sum of a life annuity", basing his calculations on the "capitalisation tables" used in Switzerland.

E. In its surrejoinder the Organization maintains its position in full.

It submits that the fact that the complainant did not receive, at the time of his recruitment, the information note annexed to the letter of 27 March 1986 that the UNJSPF had recommended sending to officials resuming participation does not mean that it failed in its duty to

inform, given that the document "was in no way relevant to the complainant's situation in March 1991". It states that it was unaware at the time of the names of the beneficiaries of the transfer agreement that had been concluded between the USSR and the UNJSPF, and that it had no reason to doubt that the list which the Fund had sent to it was exhaustive.

The ILO argues that the complainant's wife is not entitled to compensation since the conditions governing the payment of a "survivor's pension" are not met. It adds that the reference to the "capitalisation tables" is irrelevant since the UNJSPF is not subject to Swiss law.

F. At the Tribunal's request, the Organization produced its entire exchange of correspondence with the UNJSPF during the period from 18 June to 14 December 2010.

G. In his comments the complainant submits that it may be inferred from these documents that the Organization knew that the list provided by the Fund in October 1991 was not exhaustive, that it had to compile the data required to keep its staff properly informed and that the ILO, and in particular the Secretary of the Staff Pension Committee, is therefore liable in the present case.

H. In its final observations the ILO contends that the complainant's reading of its exchange of correspondence with the Fund is "highly selective". According to the Organization, if it failed in its duty to inform, it cannot be held responsible because the Secretary of the Staff Pension Committee "forms part of the chain of responsibility of the UNJSPF and its administration" as has been confirmed by the Fund itself.

CONSIDERATIONS

1. The complainant was employed in the United Nations system from 17 January 1977 to 31 January 1982. During that period he was a participant in the UNJSPF.

On his separation from service, an amount representing the actuarial equivalent of his accrued pension rights was transferred to the Social Security Fund of the USSR, of which he was a national, in accordance with an agreement concluded between that country and the UNJSPF. The balance of his pension account, i.e. 20,405.07 dollars, was retained by the Fund.

2. From 1 February 1982 the complainant worked outside the United Nations system.

Following the entry into force of an amendment to the UNJSPF Regulations on 1 January 1983, the United Nations Administrative Tribunal delivered Judgement No. 360 on 8 November 1985, in which it recognised the acquired right to restoration of a prior period of contributory service of more than five years. This gave rise to a decision by the Standing Committee of the UNJSPF, adopted on 28 January 1986, concerning officials readmitted to the Fund after 1 January 1983.

3. On 1 April 1991 the complainant was appointed to a post of director at the ILO. He had included in his application a personal history form indicating his nationality as well as his previous years of service in the United Nations system.

Having again become a participant in the UNJSPF, but with a different membership number, the complainant received from the ILO Staff Pension Committee (hereinafter the "Pension Committee") a copy of the 1 January 1990 version of the Regulations and Rules of the UNJSPF and several blank forms. He was invited, before completing the form requesting restoration of a prior period of contributory service, to consult Article 24 of the Fund Regulations concerning the right to such restoration. After making enquiries, he decided not to return the said form.

4. In July 1991 the United Nations Joint Staff Pension Board adopted a decision allowing nationals of the USSR, among others, to restore a period of contributory service ending prior to 1983 in

accordance with the aforementioned Article 24 or pursuant to Judgement No. 360.

On 3 October 1991 the Fund provided the Secretary of the Pension Committee with a list of ten ILO officials who were affected by the decision and who should be duly notified of the option now open to them. The complainant, whose name was not included in the list, was not contacted.

5. In May 2007 the complainant learned from an e-mail addressed to all ILO staff that participants in the Fund who were previously ineligible to elect to restore periods of prior contributory service of more than five years could now submit a request to that effect.

On 10 September 2007 the UNJSPF, responding to the request for restoration of the contributory service corresponding to the complainant's previous period of employment in the United Nations system, informed the Secretary of the Pension Committee that the complainant should have submitted his request within the statutory one-year deadline from the date of readmission to the Fund. The latter recalled that, during a meeting on 31 January 1986 with the secretaries of the pension committees of member organisations regarding the implementation of the Standing Committee's decision concerning the broader application of Judgement No. 360, it had been decided that it would be the responsibility of the secretaries to identify and notify participants who might be eligible. According to the Fund, the ILO had committed an administrative error and should resolve the matter with the complainant.

In a letter dated 22 October 2007, a copy of which was transmitted to the complainant, the Secretary of the Pension Committee informed the Chief of the Security, Social Protection, and Health Branch that, in her view, the Administration had breached its duty to inform the complainant.

Referring explicitly to this letter, the complainant wrote to the Chief of the Branch in question on 7 December 2007 and then to the Director of HRD on 12 December.

Having received no reply, he filed a grievance with the Joint Advisory Appeals Board. The Board held that the requisite procedures had not been followed and recommended that the Director-General return the file to HRD so that that department could "take a decision on the case without delay". This recommendation was accepted on 22 July 2008 and the complainant was informed on 20 August that he would be provided with a response within three months from the date of the Director-General's decision.

6. Having received no reply within the time limit indicated, the complainant filed another grievance with the Joint Advisory Appeals Board on 4 November 2008.

In its report of 29 June 2009 the Board, having dismissed the Organization's objection to receivability, held that the ILO should have informed the UNJSPF that the complainant had previously been employed in the United Nations system, and that the Fund should have noted that the complainant was a former participant and included his name in the list of officials eligible for restoration of prior contributory service that it had sent in October 1991 to the Secretary of the Pension Committee. At the very least, it should have indicated that the list could be incomplete (as it had done in the case of the lists attached to the letter of 27 March 1986). The Board recommended that the Director-General "negotiate directly with the Fund administration with a view to reaching a solution that reflects shared responsibility between the Office and the Fund and which is acceptable to the three parties".

7. By a letter dated 31 August 2009, which constitutes the impugned decision, the complainant was informed that the Director-General, while expressing reservations as to the receivability of the grievance *ratione temporis*, considered that the UNJSPF and the complainant shared responsibility for the latter's failure to submit the request for restoration within the prescribed time limits, and accepted the Board's recommendation "to negotiate directly with the Fund administration" with a view to finding a reasonable solution that took account of the responsibility of the different actors and that was acceptable to all.

8. On 26 November 2009 the complainant filed his complaint with the Tribunal in which he requests the quashing of the impugned decision and consequent redress.

In support of his complaint he invokes a breach of the general principles of the international civil service, the existence of discrimination against him, the need to place him in the position that he would have been in if his rights had been respected, and the "[i]nadmissibility of the arguments of the [defendant] aimed at shifting the blame to the UNJSPF and [himself]".

9. The Organization first contends that the Tribunal lacks jurisdiction to hear the case insofar as the complainant is challenging the decision of the UNJSPF of 10 September 2007. It considers that the complainant should therefore appeal to the competent United Nations administrative body. However, contrary to the ILO's contention, it is not a UNJSPF decision that is impugned before the Tribunal. The impugned decision is the final one adopted by the Director-General of the ILO on 31 August 2009. It follows that this challenge to the Tribunal's jurisdiction fails.

10. The ILO then argues that the complaint is irreceivable *ratione temporis* because the complainant submitted his first request for restoration only in 2007, i.e. 16 years after being readmitted to the UNJSPF. According to the defendant, as the complainant failed to submit a request for restoration at the time of his recruitment in April 1991, he is out of time.

It is plain from the submissions, however, that the decision to allow USSR nationals to restore their prior contributory service was taken in July 1991. As it has not been proved that the complainant was aware of this decision before May 2007, the objection raised by the defendant fails.

11. On the merits, the complainant, citing this Tribunal's case law recalled in Judgment 2768, asserts that the ILO violated the general principles of the international civil service, particularly in that it repeatedly breached its duty to inform, thereby causing him severe

damage. He considers that, given the extreme complexity of the legal situation in question, the defendant had a greater duty of care towards him and should have provided him with detailed and timely information in order to spare him the injury that he is currently suffering.

12. According to the Tribunal's case law cited by the complainant, the principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (see Judgment 2768, under 4).

13. It has been established in this case that the complainant requested the restoration of his prior contributory service only in 2007, although the Pension Board's decision to allow USSR nationals to take advantage of such restoration had been taken in July 1991.

It has further been established that a list of ten ILO officials eligible to avail themselves of that option, which did not include the complainant's name, was faxed by the Fund on 3 October 1991 to the Pension Committee, which was invited to inform the participants concerned that their application for restoration should be submitted by 30 September 1992 at the latest.

The defendant does not dispute the fact that only officials whose name appeared on the list in question were informed of the Pension Board's decision and of the deadline for submitting an application for restoration, to the exclusion of any other official, including the complainant.

Under the circumstances, can the complainant be held to have shown negligence by failing to submit his application for restoration within the prescribed time limit?

14. To exempt itself from liability, the Organization basically contends that the complainant did not receive the necessary

information because he had not advised the Fund of his previous participation by returning the application form concerning restoration of prior contributory service. The Tribunal notes from the submissions, however, that when the complainant was recruited by the Office, the aforementioned form explicitly referred to the Fund's Regulations, pursuant to which the complainant was precluded at the time from claiming restoration of prior contributory service, and that the complainant, who had supplied a personal history form with his job application indicating his nationality as well as his years of employment in the United Nations system, had not withheld any information regarding his previous circumstances.

The Tribunal finds, in the light of the foregoing, that the complainant cannot be taxed with having failed to provide the necessary information concerning his previous circumstances, nor can he be charged with any kind of negligence.

15. Regardless of the share of responsibility that might be attributed to the UNJSPF in the situation thus created, the Tribunal considers that the ILO had access to all the information which, if transmitted to the Fund, would have drawn the latter's attention to the fact that the complainant was a former participant and would, in the normal course of events, have resulted in the inclusion of his name in the list issued in October 1991.

When the defendant received the list in question, it merely contacted those officials whose names appeared on it, whereas a proper background check would have revealed that the complainant was also concerned.

16. Hence the Organization, owing to a shortcoming on the part of its services, failed in its duty to inform and, as a result, in its duty of care towards its official. It therefore bears liability, since the complainant was deprived of timely information that would have prompted him to submit an application for restoration of his prior contributory service within the prescribed time limit. The impugned decision must therefore be set aside and the complainant must, by way of compensation for the injury he suffered as a result of this

shortcoming, be re-established, at the Organization's expense, in the situation that would have been his had he submitted his application for restoration in October 1991.

The defendant will not, however, be liable for the sums paid to the Social Security Fund of the former USSR and the balance of 20,405.07 dollars retained by the UNJSPF.

17. In the circumstances of the case, the Organization's attitude caused the complainant moral injury that must be remedied by an award of 10,000 Swiss francs.

18. The complainant is entitled to costs, which the Tribunal sets at 10,000 francs.

DECISION

For the above reasons,

1. The decision of 31 August 2009 of the Director-General of the ILO is set aside.
2. The ILO shall restore the complainant's rights as indicated under 16, above.
3. It shall pay the complainant 10,000 Swiss francs for moral injury.
4. It shall also pay him costs in the amount of 10,000 francs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 6 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet