Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

113th Session **Judgment No. 3148**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr T. B. against the Centre for the Development of Enterprise (CDE) on 17 June 2010 and corrected on 22 July, the CDE's reply of 10 November 2010, the complainant's rejoinder of 15 February 2011 and the Centre's surrejoinder of 29 April 2011;

Considering Article II, paragraph 5, 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, a British national born in 1955, joined the Centre for the Development of Industry (CDI) – the CDE's predecessor – in 1992 at grade 2.B, on a contract for a fixed period of time which was regularly extended.

In his assessment report for 2005 the complainant obtained a global appreciation of 58.05 per cent. This gave him a score of 4, indicating that certain areas of his work required improvement. On

18 December 2006 he lodged an internal complaint against this report and against three decisions of 18 October and 1 December 2006 to move him to a different post. After the Director of the Centre had dismissed this internal complaint, a conciliator was appointed pursuant to Article 67(1) of the CDE Staff Regulations and Annex IV thereto. He concluded that the complaint was unfounded.

On 20 December 2006 the Director informed the complainant that, in view of his 2005 evaluation and the entry into force of the CDE Staff Regulations in 2005, the Centre was offering him a contract for a fixed period of time from 1 March 2007 to 29 February 2008. He added that, if the complainant's efforts and future evaluations provided sufficient justification, he might be given a contract for an indefinite period of time.

In the autumn of 2006, in the exercise of his duties, the complainant discovered some compromising documents possibly revealing a conflict of interest on the part of the Director of the Centre. In view of the CDE's status as a joint institution of the African, Caribbean and Pacific Group of States and the European Union, financed by the European Development Fund (EDF), he brought this information to the attention of the European Commission and a Member of the European Parliament. At the end of that year he was interviewed on this matter by the European Anti-Fraud Office (OLAF). On 26 March 2007 the Chairman of the Executive Board of the CDE informed all staff members that OLAF had decided to conduct an immediate check, on the Centre's premises, of supporting documents and material, in connection with the financing received by the Centre from the EDF.

On 29 June 2007 the complainant received his assessment report for 2006 in which he obtained a global appreciation of 48.65 per cent, which gave him a score of 6 and meant that his performance was unsatisfactory. On 4 September he informed the Head of the Administration Department that he disagreed with the evaluation contained in this report and he returned it without his signature. On 7 December 2007 he was informed that, despite two consecutive unsatisfactory assessment reports, the Executive Board had instructed

the Director to renew his contract, because he had played a major role in initiating the OLAF investigation. On 8 February 2008 his contract was therefore renewed for six months, i.e. until 31 August 2008.

On 16 May 2008 OLAF issued a non-confidential summary of its final investigation report concerning the Centre, in which it concluded that the investigation had brought to light proof of conflicts of interest, passive corruption and fraud on the part of a very senior official of the Centre. It stated that it had referred the case to the French criminal courts.

On 1 August 2008 the Head of the Administration Department met with the complainant to discuss his assessment report for 2007, which showed a global appreciation of 48.1 per cent, once again giving him a score of 6. At the end of this meeting, the Head of the Administration Department informed the acting Director of the Centre that the complainant's participation in the investigation conducted by OLAF might have had an adverse impact on his performance. On 7 August 2008 the complainant was given a second extension of his contract for eight months, i.e. until 30 April 2009. He subsequently chose not to add any comments to his report for 2007 and refused to sign it.

On 14 November 2008 OLAF recommended the holding of an external investigation into new allegations of fraud or irregularities at the Centre. In its final report of 26 November 2009 OLAF indicated that these allegations were groundless.

In a memorandum dated 7 April 2009 the Chairman of the Executive Board drew attention to the fact that the complainant did not enjoy unlimited protection as a whistle-blower and he put two options to the members of the Board: the first was to offer the complainant a contract for a fixed period of time in a new post in the programmes or funds managed by the Centre; the second was not to renew his contract on account of his assessment reports for 2005, 2006 and 2007, provided that his performance appraisal for 2008 also proved to be "substandard".

On 21 April 2009 the complainant received his assessment report for 2008 where he again obtained a score of 6 for the global

appreciation. The new Director of the Centre informed him by a letter of 28 April that, the Executive Board "having given its agreement", his contract would not be renewed. The Director reminded him that, according to Article 6(2)(b), first indent, of the Staff Regulations, a contract for a fixed period was renewable twice only and that his contract had already been extended on two occasions. He added that the complainant's status as a whistle-blower did not have the consequence of rendering legally inapplicable the relevant provisions of the Staff Regulations, according to which the granting of a contract for an indefinite period was subject to "continuing satisfactory performance", whereas his performance from 2005 to 2008 had been below the required standard.

On 26 June 2009 the complainant filed an internal complaint against this decision and his assessment report for 2008. As this internal complaint was dismissed on 25 August 2009, the complainant initiated conciliation proceedings. In his report of 20 March 2010, which constitutes the impugned decision, the conciliator concluded that the decision of 28 April 2009 was well founded owing to the complainant's unsatisfactory performance and that, for that reason, he did not intend to look for any compromise solution.

B. The complainant submits that the principles of good faith and of legitimate expectations have been breached because, in proposing the non-renewal of his contract, the Deputy Director of the Centre and the Chairman of the Executive Board did not honour the undertaking which they had given to the European Commission – to which reference is made in a letter of 29 April 2009 from a European Commissioner – that a procedure would be launched to approve the renewal of his contract.

He contends that the decision not to renew his contract is tainted with two errors of law. First, he states that the Director wrongly implied that Article 6(2)(a) of the Staff Regulations authorised only the granting of a contract for an indefinite period of time whereas, in his opinion, that provision meant that a contract for a fixed period of time should be granted where the conditions for awarding a

contract for an indefinite period of time were not met. Secondly, he then submits that the Director wrongly considered that his contract could not be renewed for a third time for a fixed period under paragraph 2(b), first indent, since that provision, which refers to temporary posts, did not apply to him because he held a permanent post.

Referring to the memorandum which the Centre produced during the second conciliation proceedings, he also argues that the decision of 28 April 2009 is tainted with an error of law and an obvious error of judgement because, although the Centre took the view that it was possible to reappoint him under the above-mentioned Article 6(2)(b), second indent, it rejected this solution on the grounds that it was contrary to the interests of the service and the principle of sound financial management. He adds that that decision is flawed because it does not state that reason.

The complainant also submits that Article 3(1) and (2) of the Staff Regulations were breached, because the Chairman of the Executive Board submitted the proposal regarding the renewal of his contract to the Board in his memorandum of 7 April 2009 – whereas only the Director was competent to do so – and it was the Board that decided not to renew his contract.

He contends that this decision was taken without either the Executive Board or the Director seeing his assessment report for 2008 or his comments thereon. His right of defence was therefore not respected.

He asserts that his assessment reports for 2005, 2006 and 2007 must be regarded as "legally non-existent documents" because they are tainted with serious flaws. He explains that the dismissal of his first internal complaint against his report for 2005 was not impugned in proceedings before the Tribunal and no internal complaint was lodged against the report for 2006, because he hoped that the Centre would review those reports in the light of the findings of OLAF's first investigation. He says that he found himself in a similar situation with regard to his assessment report for 2007, because he hoped that

the findings of the second investigation would lead the Centre to re-examine it.

Lastly, the complainant submits that his assessment report for 2008 was unlawful. He points out that his objectives for that year were not set in the previous report, as they should have been, and that he was informed of them only in October 2008.

The complainant asks the Tribunal to find, if necessary, that his assessment reports for the years 2005 to 2007 and the three decisions to move him to a different post were unlawful or even legally non-existent. He seeks the setting aside of his assessment report for 2008 and of the decision of 28 April 2009. He also claims compensation for moral and material injury and costs.

C. In its reply the Centre submits that none of the documents produced by the complainant establishes the existence of an agreement between the Centre and the European Commission that his contract should be renewed. Nor does any of these documents suggest that the complainant received personal assurances to that effect.

The defendant states that the complainant's interpretation of Article 6(2)(a) and (b) of the Staff Regulations is incorrect. In the Centre's opinion, subparagraph (a) deals only with the conditions on which a contract for an indefinite period of time may be awarded, whilst subparagraph (b) sets a limit on the number of times a contract for a fixed period of time may be renewed, which, in the instant case, it was "logical" to respect.

The Centre explains that it considered the possibility of giving the complainant a contract on the basis of the second indent of the above-mentioned subparagraph (b), in order to comply with the expectations of the European Commission, but that it decided, in the exercise of its discretionary authority, that it was not in the interests of the service to do so. In its view, the reference to the complainant's unsatisfactory performance was sufficient reason not to renew his contract.

The CDE maintains that, although the memorandum of 7 April 2009 was signed by the Chairman of the Executive Board, the proposal regarding the renewal or non-renewal of the complainant's

contract had come from the Director of the Centre. It also asserts that it is clear that the decision of 28 April 2009 was taken by the Director after he had sought the agreement of the Executive Board.

In addition, the Centre explains that the complainant's comments in his assessment report for 2008, on which the Board was not required to express an opinion, were indeed taken into account by the Director on 28 April 2009.

The Centre's main contention with regard to the complainant's arguments concerning his assessment reports for 2005, 2006 and 2007 is that they are irreceivable, because these reports have become final, since the complainant did not lodge an internal complaint against them within the prescribed time limits. Moreover, the fact that the decision of 28 April 2009 rested in part on these three reports does not have the effect of reopening the time limits for challenging them.

The CDE admits that the failure to set work objectives for 2008 is regrettable, but contends that this in itself is not enough to invalidate the conclusions of the last assessment report. Indeed, these objectives were not formally set until the autumn of 2008, the complainant was aware of them before that.

D. In his rejoinder the complainant reiterates his arguments and says that, if the censored version of the report of 26 November 2009 which he has produced does not enable the Tribunal to gain a clear view of the sequence of events, it may obtain a complete version from the CDE, the European Commission or OLAF.

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

CONSIDERATIONS

1. Since 1992 the complainant had held a contract for a fixed period of time, which had been extended several times.

2. As his assessment report for 2005 indicated that some areas of his work required improvement, the complainant lodged an internal

complaint against it on 18 December 2006. This internal complaint, which was also directed against three decisions of 18 October and 1 December 2006 to move him to a different post, was dismissed following a conciliation procedure initiated subsequently by the complainant, the terms and conditions of which are laid down in Annex IV to the CDE Staff Regulations.

After the entry into force of these Staff Regulations and in view of the global appreciation contained in the above-mentioned assessment report, on 20 December 2006 the complainant was offered another contract for a fixed period of time, from 1 March 2007 to 29 February 2008. Although in his assessment reports for 2006 and 2007 the complainant's performance had been deemed unsatisfactory, this contract was subsequently extended twice and was due to expire on 30 April 2009.

3. In December 2006 the complainant had reported to the European Commission that certain documents forwarded to him in the context of his duties appeared to reveal the existence of a conflict of interest on the part of the Director of the CDE. At the end of its investigation, OLAF announced that it had discovered evidence of a conflict of interest. After receiving additional documents in the course of 2008, OLAF opened another investigation. In its final report of 26 November 2009, of which the complainant produces a censored version, it indicated that it had not found any evidence of fraud or irregularities.

4. On 28 April 2009 the complainant was notified of the decision not to renew his contract. He lodged an internal complaint against that decision and against his assessment report for 2008 to which the decision referred. As his internal complaint was dismissed on 25 August, on 12 October 2009 he requested the opening of conciliation proceedings.

5. In his report of 20 March 2010 the conciliator concluded that the decision of 28 April 2009 "was fully justified" in view of

the complainant's very unsatisfactory performance during his employment at the Centre in latter years and that, in those circumstances, he could not envisage any settlement. That is the decision which the complainant impugns before the Tribunal. He asks the Tribunal to find, if necessary, that his assessment reports for the years 2005 to 2007 and the three above-mentioned decisions to move him to another post are unlawful or legally non-existent, to set aside his assessment report for 2008 as well as the decision not to renew his contract and to award him compensation for moral and material injury.

6. The complainant first submits that the principles of good faith and of legitimate expectations have been breached, because the Deputy Director of the Centre and the Chairman of the Executive Board proposed to the Board that it should either renew or not renew his contract, whereas they had assured the European Commission that they would propose a renewal of his appointment.

He contends that it is clear from a letter of 29 April 2009, which a European Commissioner sent to the Chairman of the Executive Board of the CDE, that the European Commission had informed the Board that it was opposed to the non-renewal of his appointment on the grounds of his performance appraisals. The Commission had thus taken into account the principle of protecting whistle-blowers, according to which a staff member who has forwarded information to OLAF must not suffer adverse consequences, as well as the findings of the investigation opened in response to the information concerning the former Director, which he and other staff members had passed on, and on the opening of an investigation concerning the Deputy Director.

It was also plain from that letter of 29 April 2009 that on 31 March 2009, during a meeting between representatives of the Commission and the Deputy Director of the Centre, a way of extending his contract in conformity with the Staff Regulations had been identified, namely through his secondment. In his opinion, this meant that the Deputy Director had approved that secondment. He

infers from the wording of the above-mentioned letter that the Deputy Director and the Chairman of the Executive Board had agreed with the Commission that a proposal to extend his appointment should be submitted to the Board. However, they reneged on the undertaking that they had given by announcing that they were not in favour of renewing his contract.

7. The Tribunal draws attention to the fact that, while it is true that where a staff member has received assurances, in accordance with the principle of good faith, he or she is entitled to demand the fulfilment of his or her expectations, consistent precedent has it that the right to fulfilment of a promise is subject to the condition that it must be substantive, i.e. to act, or not to act, or to allow, that it should come from someone who is competent or deemed competent to make it; that breach should cause injury to him or her who relies on it; and that the position in law should not have altered between the date of the promise and the date on which fulfilment is due (see, for example, Judgments 782, under 1, and 3005, under 12).

8. The complainant himself admits that the letter of 29 April 2009, which he presents as conclusive evidence, does not mention any agreement or undertaking on the part of the Chairman of the Executive Board and the Deputy Director, but contains only indications, and that there is no other document in the file to show that these indications were of such a precise and unconditional nature that they might be deemed to constitute proof of assurances to him that his contract would be renewed.

Moreover, none of the documents in the file shows that the complainant had received personal, direct assurances from someone who was competent to give them, or who could be regarded as competent, such that he might entertain a legitimate expectation that he would remain in the service of the CDE.

9. As the requisite conditions for engendering a right to the fulfilment of a promise are not met, this plea must be dismissed.

10. Secondly, the complainant asserts that the decision of 28 April 2009 not to renew his contract is unlawful having regard to Article 6(2) of the Staff Regulations, which reads as follows:

> "Statutory staff shall be engaged under one of the following contracts:
>
> (a) Contracts for an indefinite period of time
>
> A contract approved by the Executive Board is subject to:
>
> – the availability of funding,
> – continuing satisfactory performance, in accordance with Article 30,
> – continuance of the functions occupied by the staff member,
> – ability to perform the functions as per contract.
>
> […]
>
> (b) Contracts for a fixed period of time
>
> – A contract approved by the Director for staff engaged to fill a post which is included in the list of posts appended to the section of the Centre's budget and which the budgetary authorities have classified as temporary. The duration of such contracts shall be up to two years, renewable twice only, up to a maximum overall period of five years.
> – A contract approved by the Director for staff engaged to fill a post established under programmes and funds managed by the Centre.
>
> […]"

11. The complainant submits that the above-mentioned decision is tainted with two errors of law. First, the Director of the Centre "implicitly considered" that under the aforementioned subparagraph (a) it is possible only to award a contract for a fixed period of time, whereas if the conditions for doing so are not met, an appointment or reappointment for a fixed term would be allowed. Secondly, the Director wrongly considered that his contract could not be renewed for a third time for a fixed period under subparagraph (b), first indent, as this provision, relating to temporary posts, did not apply to him because he held a permanent post.

12. The Tribunal finds, however, on reading the decision of 28 April 2009, that no error of law was made in applying the

provisions of Article 6(2) to the complainant. Indeed, the fact that subparagraph (b), first indent, of this paragraph stipulates that only a contract for a fixed period of time granted to a staff member engaged to fill a post which the budgetary authorities have classified as temporary is "renewable twice only" does not mean that this restriction does not apply to a permanent post. As the conciliator recognised, it must be considered that it was a "perfectly balanced" decision on the part of the CDE "to apply […] to contracts for a fixed period of time charged against the budget for permanent posts the […] same principles and restrictions as those laid down for contracts [of this kind] for temporary posts". In these circumstances the complainant, whose contract had already been renewed twice, could not expect a further extension. With regard to the application of the aforementioned paragraph 2(a), the Tribunal notes that it is clear from this decision that the Director rightly emphasised that the award of a contract for an indefinite period of time is subject to "continuing satisfactory performance". As the complainant's performance had been unsatisfactory for several years, the Director therefore had reason to consider that the complainant could not be given such a contract.

The second plea is therefore unfounded.

13. Thirdly, the complainant denounces an error of law and an obvious error of judgement, in that his reappointment under Article 6(2)(b), second indent, of the Staff Regulations was deemed contrary to the interests of the service and the sound management of the funding allocated by the EDF. He complains that the decision of 28 April 2009 did not mention this as a reason for not renewing his contract.

14. However, as the Centre observes, although the complainant was a whistle-blower, his status as such did not mean that "a service need could be created where there was none", or that the applicable rules could be circumvented, notwithstanding the existence of a recommendation from the European Commission concerning the

renewal of the complainant's contract on the basis of Article 6(2)(b), second indent, of the Staff Regulations. In addition, the CDE is correct in stating that the reappointment of a staff member whose unsatisfactory performance had been recorded on several occasions would have been synonymous with poor management. The defendant did not therefore commit an error of law or an obvious error of judgement in exercising its discretion when assessing the needs of the service and the complainant's qualifications compared with the requirements of a programme.

The argument that the decision did not give adequate reasons will not be accepted, for it is plain from the decision of 28 April 2009 that it was based on a number of factors which together constituted sufficient grounds not to renew the complainant's contract.

As the Tribunal has consistently held, the lack or inadequacy of an explanation can be remedied at the appeal stage provided that the appeal body may examine the complete file and that the staff member is given his or her full say (see, in particular, Judgment 2668, under 7(a)). This requirement has been fully respected in the instant case.

It follows from the foregoing that the third plea is equally groundless.

15. Fourthly, the complainant contends that the decision of 28 April 2009 breached Article 3(1) and (2) of the Staff Regulations which state:

> "1. The Executive Board shall be responsible for approving, on proposals from the Director, the recruitment of staff at levels 2.A and 2.B and the renewal, extension or termination of staff contracts and any individual special conditions relating to one or more members of staff.
>
> […]
>
> 2. The Director shall seek the approval of the Executive Board on all matters relating to recruitment of staff and the renewal, extension and termination of staff contracts. Such matters shall include, *inter alia*, vacancies, modes of advertisement of vacancies, applications received and the method and basis of selection of the candidates."

16. According to the complainant, it was the Chairman of the Executive Board, not the Director, who submitted the proposal either to renew, or not to renew his contract and that the Board itself decided not to renew it.

17. It has been established that it was indeed the Chairman of the Executive Board who, in his memorandum of 7 April 2009, submitted the proposal regarding the renewal or non-renewal of the complainant's contract to the Board. This action was not in conformity with the provisions cited above. Even if, as the defendant contends, the other members of the Executive Board were not bound by a proposal from the Chairman, the fact remains that the relevant provisions were not respected insofar as the Board discussed, not a proposal from the Director, but one from its Chairman. The Tribunal does not find that the non-renewal decision in itself was unlawful in any way, since it was up to the Executive Board to decide whether to approve the proposal submitted to it. Nevertheless, the breach of the aforementioned article justifies the acceptance of the fourth plea.

18. Fifthly, the complainant argues that the decision not to renew his contract rests on his unsatisfactory assessment report for 2008, yet his comments on that report were not taken into consideration either by the Executive Board, which agreed to the non-renewal of his contract, or by the Director, who considered himself to be bound by the evaluation made by the complainant's supervisors.

19. Irrespective of what will be said below with regard to the lawfulness of the conditions in which the above-mentioned report was drawn up, the Tribunal considers that this plea must fail. Contrary to the complainant's submissions, it was indeed the Director who took the decision not to renew his contract and the Executive Board was not therefore under any obligation to hear the complainant. There is no proof that the Executive Board was not informed of the complainant's assessment report or of his comments thereon before it gave its opinion. Furthermore, the decision of 28 April 2009 contains nothing which would confirm the complainant's allegation that the

Director considered himself bound by the evaluation made by the complainant's supervisors.

20. Sixthly, the complainant states that the decision of 28 April 2009 is tainted with an "error of law because the CDE inferred from the lack of a challenge in the form and within the time limits laid down in the Staff Regulations of [his] assessment reports for 2005, 2006 and 2007 […] that unsatisfactory performance had been definitively established, which ruled out his reappointment", and that those reports were "tainted with blatant flaws of such obvious seriousness that they constituted […] legally non-existent documents".

21. The Centre submits that the arguments concerning the lawfulness of the assessment reports for 2005, 2006 and 2007 are clearly irreceivable, as these reports cannot be challenged because they have become final.

22. The Tribunal considers that an assessment report constitutes a decision adversely affecting the person concerned and, as such, it may be contested by means of an internal complaint lodged with the prescribed time limits. It may even be impugned in proceedings before the Tribunal after internal means of redress have been exhausted (see, in particular, Judgment 2991, under 11). However, it is clear from the evidence on file that, in the instant case, although the complainant did challenge his assessment report for 2005 through an internal complaint and then requested the opening of conciliation proceedings after this internal complaint was dismissed, he did not thereafter file a complaint with the Tribunal. In these circumstances, the aforementioned report and the three decisions taken in 2006 to move him to a different post, which also formed the subject of that internal complaint, have become final. It is also plain from the file that the complainant did not challenge his assessment reports for 2006 and 2007 in the prescribed form and within the prescribed time limits. For this reason, these reports have become final and they may not be called into question, even with regard to their lawfulness, in the context of this dispute.

The arguments which the complainant puts forward to explain his lack of action and the case law on which he relies are of no avail in this case.

The sixth plea must therefore be dismissed.

23. Lastly, in a seventh plea, the complainant challenges the lawfulness of his assessment report for 2008. He takes the CDE to task for not setting his work objectives for the most part of 2008. In his view, this should entail the cancellation of assessments relating to the achievement of these objectives and to his professional abilities during the period in question.

24. The Tribunal notes that, in his memorandum of 7 April 2009, the Chairman of the Executive Board put two options to the members of the Board, one of which was not to renew the complainant's contract on the basis of his assessment reports for 2005, 2006 and 2007, provided that his performance appraisal for 2008 also proved to be "substandard". In addition, it is plain from the decision of 28 April 2009 that the non-renewal of the complainant's appointment was explained by his assessment report for 2008, inter alia. Hence, if the complainant was not given a contract for an indefinite period of time, it was partly because his performance had remained unsatisfactory throughout 2008.

25. The Tribunal draws attention to the fact that, where the reason for not renewing a contract is the unsatisfactory nature of the performance of a staff member, who is entitled to be informed in a timely manner as to the unsatisfactory aspects of his or her service, the organisation can base its decision only on an assessment carried out in compliance with previously established rules (see, in particular, Judgment 2991, under 13, and the case law cited therein). This presupposes that the person in question has been informed in advance of what is expected of him or her, in particular, by the communication of a precise description of the objectives set.

26. In the instant case, it is not disputed that the work plan and the objectives assigned to the complainant for 2008 were not included in the report for the previous year, i.e. 2007, as is required by Rule No. R3/CA/05, entitled "Periodic Assessment", and that it was not until the autumn of 2008 that these objectives were formally set. The complainant therefore had no work plan informing him of the objectives set for the whole of the reference period.

27. It may be concluded from the above that, since the appraisal for 2008 was not conducted in accordance with the rules established by the organisation, it is flawed and must be set aside.

28. The complainant asks the Tribunal to set aside the decision of 28 April 2009 not to renew his contract, as this decision was based partly on his assessment report for 2008. As was stated above, this report was drawn up in unlawful conditions and the decision based on it is therefore unlawful and must be set aside, also bearing in mind what was said under 17, above.

29. The complainant seeks compensation for the moral and material injury which he has allegedly sustained.

30. Under the terms of Article 6(2) of the Staff Regulations, the duration of a contract for a fixed period of time "shall be up to two years, renewable twice only" and the award of a contract for an indefinite period of time is subject, inter alia, to "continuing satisfactory performance".

The Tribunal draws attention to the fact that, in accordance with its case law, if an organisation restricts the number of fixed-term contracts a staff member may be given and lays down specific conditions for the award of an indefinite contract – as is the case here – a staff member cannot sit back and wait for his/her contract to be turned into an indefinite contract, since he/she will be expected to meet stricter requirements (see, in particular, Judgments 2337, under 5, and 2992, under 20).

It is clear from the submissions that the complainant could no longer obtain an extension of his contract for a fixed period of time, and there is nothing in the file to suggest that he met the requisite conditions for being given a contract for an indefinite period of time. Although the assessment report for 2008 may not be taken into consideration because it has been set aside, those for 2005, 2006 and 2007, which have become final, as is stated in consideration 22 above, show that the complainant did not meet the condition of "continuing satisfactory performance". The complainant has not, therefore, suffered any material injury.

31. However, in view of the unlawful nature of the decision taken with regard to him, he has suffered moral injury which must be redressed, taking account of the circumstances of the case, by an award of compensation in the amount of 10,000 euros.

32. The Tribunal does not consider that there are any grounds for ordering the production of a complete version of the OLAF report of 26 November 2009, as the complainant requests.

33. The complainant is entitled to costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. The decision of the Director of the CDE of 28 April 2009 and the complainant's assessment report for 2008 are set aside.
2. The Centre shall pay the complainant compensation in the amount of 10,000 euros for moral injury.
3. It shall also pay him 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 4 May 2012, Mr Seydou Ba, 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 4 July 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet