Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

E. (Nos. 1 and 2)

v.

ILO

131st Session **Judgment No. 4400**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. E. against the International Labour Organization (ILO) on 4 February 2016;

Considering the decision of the President of the Tribunal to grant a stay of proceedings, requested by the complainant under Article 10, paragraph 3, of the Rules of the Tribunal;

Considering the second complaint filed by Mr L. E. against the ILO on 15 February 2018 and corrected on 6 April, the ILO's reply of 22 May, corrected on 24 May, the complainant's rejoinder of 1 October and the ILO's surrejoinder of 24 October 2018;

Considering the emails of 15 and 20 February 2018, in which the complainant's lawyer advised that the complainant did not wish to withdraw his first complaint but had no objection to the two complaints being joined;

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

Having examined the written submissions;

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

The complainant, a former official of the International Labour Office ("the Office"), the ILO's secretariat, impugns the decisions of the Director-General to issue a reprimand against him, to revoke his appointment as a Director, to appoint another person to that post and, finally, to discharge him with notice.

At the material time, the complainant held the post of Adviser to the Deputy Director-General for Field Operations and Partnerships, at grade P.5, under a fixed-term contract. On 19 November 2014 he was arrested at his home by the French police and taken into custody. The ILO was alerted to the situation at his request. He appeared before the *Tribunal correctionnel* (a French criminal court) charged with having repeatedly made death threats against his wife, in particular on 16 August 2014, and of having assaulted her, also on 16 August 2014, resulting in her being incapacitated for work for two days. He denied the charges at the hearing. In a judgment of 6 February 2015, the *Tribunal correctionnel* found him guilty of the charges, gave him a 15-day suspended prison sentence and decided that the conviction would not be entered in certificate No. 2 of his criminal record, which is the certificate that can be disclosed to employers in some circumstances. The complainant did not file an appeal against the judgment.

In the meantime, the complainant had applied for two posts of Director of Country Office for which a call for expression of interest had been published. At a meeting with the Coordinator of the Resourcing Unit of the Human Resources Development Department (HRD), the complainant handed the latter a sealed envelope containing a note in which he explained that, for reasons of confidentiality, in his online application he had answered "no" to the question whether he had ever been prosecuted or convicted, but in fact he was involved in proceedings before the French courts, concerning which he was willing to provide further information if necessary. He asked the Coordinator not to open the envelope until his application for either of the two posts had been recommended. He was subsequently invited to participate in an assessment test and then to an interview for the position of Director of the Abuja Office. Having been contacted by the Coordinator of the Resourcing Unit about the progress of the legal proceedings in April 2015 and then invited by the Director of HRD to a meeting on that subject on 23 April, the complainant provided confirmation from his lawyer that the case had been "closed" and the judgment was "now final", together with a copy of certificate No. 3 of his criminal record, which did not show any convictions. The sealed envelope was then handed back to him. On 2 June he was appointed to the position of Director of the Abuja Office under a two-year fixed-term contract commencing on 1 July.

On 8 June 2015 the French police informed the ILO about the complainant's conviction on 6 February. By letter of 16 June, he was informed of the Director-General's proposal to dismiss him summarily, as his behaviour towards his wife – which constituted a serious breach of the Standards of Conduct for the International Civil Service and the Principles of Conduct for Staff of the International Labour Office – was compounded by his deliberate attempt to conceal his conviction and was such as to jeopardise the reputation and interests of the Organization. The complainant was invited to submit any observations within eight days. He was informed that, under article 12.2 of the Staff Regulations, he had the right to refer the proposed sanction to the Joint Advisory Appeals Board (JAAB) within one month.

On 18 June the complainant's wife sent an email to the Deputy Director-General for Management and Reform, in which she retracted her accusations. By a letter of the same day, the complainant was notified of the Director-General's decision to suspend him from his duties with pay as from the date of receipt of that letter, pending the Director-General's final decision on the sanction proposal of 16 June. On 23 June the complainant submitted his observations, in which he claimed to be innocent and stated that he would take steps to ensure that the conviction was set aside if required. On 25 June the Deputy Director-General asked him for further clarification, requested several documents, including the police report on the events of 16 August 2014 and the judgment of 6 February 2015, and informed him that his suspension continued to apply. In his response of 1 July, the complainant claimed once again that he was innocent, provided a copy of the judgment and referred to a letter from his lawyer dated 30 June, in which she explained that the *Tribunal correctionnel* had decided not to enter the conviction in certificate No. 2 of the complainant's criminal record as it did not wish his employer to be aware of it and that disclosing such information to third parties was a criminal offence. In the same letter, the lawyer stated that an application for review of the judgment could be considered in view of the statements made by the complainant's wife on 18 June. On 9 July the Director of HRD asked the complainant for proof that the application for review had been filed and a clear indication as to the likely duration of the proceedings. On 14 July the complainant sent him a copy of a communication from his lawyer setting out the procedure.

On 15 July the complainant lodged a grievance with the JAAB, challenging the proposal to dismiss him summarily and the decision to suspend him from his duties, which he requested be withdrawn. On the same day, he was notified that the Director-General had decided to suspend the disciplinary proceedings pending the outcome of the application for review on condition that he be kept informed of the progress of the application, to impose a reprimand for the complainant's failure to inform the Organization of his conviction and to lift his suspension. The complainant was hence instructed to report back to his post of Adviser to the Deputy Director-General for Field Operations and Partnerships. The complainant received the reprimand on 24 July and withdrew his grievance on 27 July.

On 4 August the complainant's wife contacted the Director of HRD explaining that she stood by her statements of 18 June and offered her apologies, that she had understood that the outcome of the application for review would determine her husband's professional future and that she was prepared to provide the Administration with all the necessary information *"in camera"*, since its disclosure to the French authorities would lay her open to prosecution for fabricating charges. She asked to meet him in the presence of her husband. On 28 August the complainant was requested to inform the Organization immediately of the progress of the review proceedings.

On 4 September the Director of HRD met the complainant's wife, who reiterated her statements. She said that her husband had subjected to her to "verbal and emotional abuse" over a long period, but that there had not been any physical violence. She repeatedly said that she did not want to confess to the French authorities for fear of the consequences, and expressed her concern for her family's future should her husband be dismissed. On 9 September the complainant asked the Deputy Director-General for Management and Reform that a solution be found, after repeating that his wife had offered to provide further clarification to the ILO, but only to the ILO, on account of the serious legal repercussions that she faced. On 12 October he was asked to provide evidence that the charges against him were unproven within ten days, after which the matter would be referred back to the Director-General for a final decision. The complainant replied on 23 October, claiming again that he was innocent. He stated that in order for the case to be reopened, his wife would have to provide a statement in which she would incriminate herself, which she was unable to do, and that he had no other documents

relating to his conviction. He attached a letter from his lawyer stating that it was a criminal offence to disclose a criminal case file to any third party.

On 3 November the Director-General announced his decision to appoint another person as Director of the Abuja Office.

By letter of 16 December 2015, the complainant was informed of the Director-General's decision to discharge him with one month's notice and an indemnity equivalent to four and a half months' base salary for breaching the Standards of Conduct for the International Civil Service and the Principles of Conduct for Staff of the International Labour Office. According to the Director-General, as no application for review had been filed, the judgment of 6 February 2015 established that the charges against him were proven and, accordingly, so was his guilt. The complainant responded on the same day. He claimed to be innocent and denied that he was unwilling to file an application for review. He provided a letter from his lawyer dated 2 November 2015, in which she noted his decision to pursue review proceedings. The application for review was filed with the *Cour de révision et de réexamen* (the Revision and Review Court) on 11 January 2016.

On 13 January 2016 the complainant submitted a grievance to HRD challenging the decisions of 15 and 24 July 2015 to issue him with a reprimand. He sought confirmation that his continued employment was not linked to the outcome of the application for review and asked for the reprimand to be withdrawn. He declared himself ready to resume his duties at the Abuja Office. The following day, he submitted a new grievance to the JAAB against the decision of 16 December 2015 to discharge him with notice, in which he also requested that the reprimand be withdrawn. By letter of 22 January 2016, the complainant was notified that the Director-General had decided to maintain his decision of 16 December 2015 and that the complainant would therefore be discharged with effect from 31 January 2016. The letter specified that the decision was final and that any appeal could hence only be addressed to the Tribunal.

On 4 February 2016 the complainant filed a first complaint against the decision of 22 January, requesting the Tribunal to set aside all the sanctions imposed on him, to order the ILO to reinstate him and appoint him as Director of the Abuja Office, and to award him compensation

for the material and moral harm allegedly suffered by him and his family and costs for legal expenses incurred since June 2015.

On 23 February 2016 the Director of HRD asked the JAAB to determine the receivability of the grievance of 14 January as a matter of urgency. The JAAB delivered a first report on 15 March, in which it stated that the Administration had not followed the applicable procedure in imposing the sanction of discharge with notice without a prior proposal, in breach of article 12.8(1) of the Staff Regulations. It found that the grievance was receivable and considered that, in the circumstances of the case, the complainant could refer the sanction of discharge ("the sole remaining document in dispute") to the JAAB within one month under article 12.2(2), which he had done. It recommended that the Director-General invite the complainant to suspend the proceedings before the Tribunal while the JAAB formulated its recommendations on the merits of the case. A stay of proceedings on the first complaint before the Tribunal was granted on 25 April 2016.

On 6 November 2017 the JAAB delivered its second report, in which it decided to address only the lawfulness of the sanction of discharge with notice, as the reprimand had become final as a result of the complainant's failure to challenge the implicit rejection of his grievance of 13 January 2016 by HRD. It recommended that the Director-General reconsider the contested sanction and that the range of sanctions provided for in the Staff Regulations, as well as and the entire disciplinary process then in force, be reviewed with a view to safeguarding the rights of officials and the interests of the Organization. By letter of 17 November 2017, which constitutes the impugned decision in his second complaint, the complainant was informed that the Director-General had decided to confirm his discharge with notice.

In his second complaint, the complainant requests the Tribunal to set aside the impugned decision and the initial decisions (namely, the reprimand, the cancellation of his appointment as Director of the Abuja Office, the appointment of another person to that post and his discharge) and to order his reinstatement to that or another appropriate post and the restoration of his full rights, with interest on all sums owing from each due date at a rate of 5 per cent per annum. In the alternative, he requests a notional reinstatement until the end of his fixed-term contract. He also claims redress for all material and moral injury, as well as costs in the amount of 10,000 euros. Lastly, he requests that an amount

corresponding to the fees and taxes which he has undertaken to pay to his lawyer be deducted from any monetary awards made to him and that such amount be paid to his lawyer.

The ILO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. In essence, the complainant mainly challenges before the Tribunal the sanction of discharge with notice which was imposed on him by the Director-General on 16 December 2015 as a result of the fact that a French criminal court, whose judgment had become final, had convicted him of making death threats to his wife and assaulting her, for which he had been given a suspended sentence of 15 days' imprisonment. He also impugns the reprimand which had previously been issued against him on 24 July 2015 for having deliberately concealed this conviction from the ILO. Lastly, he challenges the decision by which the Director-General revoked his appointment as Director of the Abuja Country Office, which had been announced shortly before the Organization learned of the conviction, and the appointment of another person to that post.

2. Article 12.2 of the Staff Regulations, which sets out the procedure for the application of disciplinary sanctions, provides:

> "1. Before the application of any sanction other than warning, a proposal to apply it, stating the reasons for which it is made, shall be communicated in duplicate to the official concerned. The official shall initial and return one copy of the proposal within eight days of its receipt, adding to it any observations the official may wish to make.
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> 2. Subject to the provisions of article 12.8 of the Staff Regulations, in the case of any sanction other than warning or reprimand the official shall have the right to refer the proposal, together with any observations made in accordance with paragraph 1 above to the Joint Advisory Appeals Board within one month from receipt of the proposal, said period to include the eight days referred to in paragraph 1 above. Reference to the Joint Advisory Appeals Board may also be waived with the agreement of the official concerned.
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> 3. The decision to apply a sanction shall be communicated in duplicate to the official concerned, who shall initial and return one copy. In the case of a warning, the official, if he/she so wishes, may add his/her observations."

These provisions are applicable to all officials insofar as the application of a warning, a reprimand or a censure is concerned. The sanctions of discharge and summary dismissal apply both to established officials and, under article 12.8 of the Staff Regulations, to fixed-term officials at an established office of the Office. The complainant, who belonged to the second category, was hence covered by the safeguards provided for under those provisions.

3. Aforementioned article 12.2 establishes a novel legal mechanism whereby the JAAB can be requested, in the case of sanctions other than a warning or reprimand, to give an opinion on the Organization's proposed sanction before the disciplinary authority takes a decision.

It may be inferred from articles 13.2 and 13.3 of the Staff Regulations – which deal with the procedure for examining grievances and exclude from their scope decisions covered by certain special procedures – that where officials have the opportunity to refer their case to the JAAB before a decision is taken, they do not subsequently have access to internal remedies to challenge the decision adopted. Indeed, the drafters of the Staff Regulations seem to have considered that, in such cases, the possibility of subsequently referring the matter back to the JAAB made little sense.

4. In this case, the complainant was informed on 16 June 2015 of the proposal to dismiss him summarily on account of the acts that had led to the aforementioned conviction. After the complainant had referred the proposed sanction to the JAAB, then withdrawn that referral, and also received the aforementioned reprimand of 24 July 2015, the Director-General eventually decided on 16 December 2015 to apply the sanction of discharge with notice.

5. In view of the foregoing, it should be pointed out that the decision of 16 December 2015 to discharge the complainant could not be challenged by way of an internal appeal and could therefore have been impugned directly before the Tribunal since it was final within the meaning of Article VII, paragraph 1, of its Statute.

However, since that decision did not explicitly state that it was final – which is regrettable, as this omission was liable to create uncertainty in the complainant's mind – the complainant submitted a grievance against

it to HRD on 13 January 2016, which the Office de facto agreed to examine and which was dismissed in a decision of the Director-General of 22 January 2016 confirming the contested sanction of discharge.

This second decision, which this time explicitly stated that it was final, is impugned in the first complaint filed with the Tribunal.

6. Moreover, the complainant considered himself compelled to submit a grievance to the JAAB on 14 January 2016. The JAAB took the view – mistakenly, as will be discussed below – that, as the Director-General had ultimately decided to apply the sanction of discharge with notice, and not summary dismissal as initially envisaged, the Organization should have sent the complainant a new proposal of sanction so as to enable him to challenge it in advance. In its first report, delivered on 15 March 2016, the JAAB therefore held that this grievance, lodged after the decision had been taken, was receivable owing to that particular circumstance.

As the JAAB had suggested in the same report, the complainant then asked the Tribunal to stay the proceedings on his first complaint, while the Organization had no choice but to participate in the internal appeal procedure initiated by the complainant.

Then, after the JAAB had delivered its report on the merits of the case on 6 November 2017, the Director-General again confirmed in a decision of 17 November 2017 – which also stated that it was final – the contested sanction of discharge.

That is the impugned decision in the second complaint.

7. The two complaints brought in turn by the complainant in the circumstances described above essentially seek the same redress, rest mainly on the same facts and are broadly based on the same arguments. They shall therefore be joined to form the subject of a single judgment.

8. The Tribunal considers that the decision of 17 November 2017 – in which the Director-General, having taken into account the recommendations of the JAAB, confirmed the sanction imposed on 16 December 2015, as he had already done in his decision of 22 January 2016, before the Board issued an opinion – implicitly but necessarily cancelled and replaced the latter decision, for which, in legal terms, it has simply substituted itself.

While, in the particular circumstances of this case, the complainant's challenge to the decision of 17 November 2017 must be regarded as being receivable notwithstanding that the decision of 16 December 2015 was, as mentioned earlier, already a final decision, the first complaint, directed against the decision of 22 January 2016, has therefore become moot.

Consequently, there is no need for the Tribunal to rule on that complaint.

9. In his first complaint, the complainant requested the convening of a hearing and, in particular, the hearing of witnesses. Given that, as has just been stated, there is no need to rule on that complaint, this request – which is not repeated in the second complaint – has itself become moot. Furthermore, in view of the abundance and high degree of clarity of the submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to order hearings.

10. In support of his second complaint, the complainant firstly submits that in the decision of 17 November 2017, the Director-General did not sufficiently explain why he did not follow the recommendation of the JAAB that he review the contested sanction of discharge. More specifically, the complainant argues that the decision in question did not address the procedural flaw identified by the JAAB in its report of 15 March 2016 concerning the imposition of a different sanction from that originally proposed.

However, while it is true that under the Tribunal's settled case law, the executive head of an international organization, when taking a decision on an internal appeal that departs from the recommendations made by the appeals body, to the detriment of the employee concerned, must adequately state the reasons for not following those recommendations (see, for example, Judgments 2339, consideration 5, 3208, consideration 11, or 4062, consideration 3), such a decision cannot be expected to address all the points raised by the appeals body in its opinion. In this case, the aforementioned procedural flaw was not even mentioned in the JAAB's report of 6 November 2017, in which the JAAB set out its recommendations to the Director-General on the merits of the case. Moreover, the JAAB pointed out that flaw in its first report only in connection with its consideration of the receivability of the grievance. The impugned decision

– which contains a sufficient statement of reasons in respect of the reality, wrongfulness and seriousness of the complainant's misconduct – cannot therefore be criticised for failing to deal with this particular point.

11. The complainant next submits that the impugned decision is tainted with various flaws involving infringement of the aforementioned provisions of article 12.2 of the Staff Regulations.

12. In the first place, returning to the procedural issue discussed above, he submits that the Director-General could not lawfully apply the sanction of discharge with notice without first sending him a proposal to apply that sanction specifically, since the sanction originally proposed was summary dismissal.

However, contrary to what the JAAB found in its first report, the Tribunal considers that, in the present case, this was not unlawful.

It is true that discharge with notice (simply called "discharge" in the relevant provisions of the Staff Regulations) and summary dismissal are two different sanctions. However, the first is plainly less severe than the second. Hence although a literal reading of article 12.2(1) – which is worded somewhat clumsily – may appear to require that the sanction eventually applied always be identical to the one initially proposed, it is tolerably clear that this provision should be construed as not entailing repeat proceedings with a new sanction proposal unless the disciplinary authority ultimately intends to impose a heavier sanction on the official concerned than the one stated in the original proposal. The spirit of article 12.1 is to allow an official against whom disciplinary proceedings have been brought to submit her or his observations and to benefit from any support which the findings of the JAAB may provide, with a view to attenuating the decision which the disciplinary authority is preparing to apply in a manner that will, by definition, be favourable to her or him. To forbid that authority from applying a less severe sanction than the one originally considered because it had taken account of the official's observations – as was the case here – or the appeals body's recommendations unless the entire procedure was repeated with a new sanction proposal would fly in the face of common sense.

The plea will therefore be dismissed.

13. In the second place, the complainant submits that the ILO, which, on 15 July 2015 decided to suspend the disciplinary proceedings brought against him pending the outcome of an application for review which he had stated he intended to file against his conviction by the criminal court, could not then complete those proceedings – as it did in the decision of 16 December 2015 – when it transpired that, as of that date, the complainant had still not taken that step, without having to restart the proceedings in their entirety on the basis of a new sanction proposal.

This plea is irrelevant. As the Organization had not, in this case, terminated the proceedings but merely suspended them, it was entitled to resume them if it ultimately saw fit from the stage at which they had been suspended.

14. In the third place, the complainant submits that since his decision to withdraw the proceedings which he had initially brought before the JAAB was linked to the suspension of the disciplinary proceedings against him, the Organization should have allowed him to lodge another grievance with the JAAB when it decided to resume those proceedings.

However, the evidence shows that an email sent by the secretary *ad interim* of the JAAB on 15 July 2015 following the complainant's submission of his grievance clearly directed his attention to the option he would subsequently have either to decide, together with the Organization, to suspend the proceedings before the JAAB or to withdraw the case definitively, pursuant to, respectively, articles 7 and 8 of Annex IV to the Staff Regulations, the provisions of which were reproduced in full in the email. It was hence in full knowledge of the facts that the complainant stated to the secretary *ad interim* in an email of 27 July 2015 that he had decided to "withdraw this case", explaining that he preferred to "follow the matter administratively". Furthermore, the Board's Secretariat replied to that email on the same day, notifying the complainant that it took note of the withdrawal and "consider[ed] the case closed", and the complainant did not react to that statement. Accordingly, the Tribunal finds that the Organization was justified in considering that the complainant had waived his right to consult the JAAB in connection with the disciplinary proceedings and that it neither failed to have regard to the requirements of good faith nor

breached its duty of care by completing those proceedings without enabling the complainant to refer the matter back to the JAAB.

Moreover, although the complainant submits in his rejoinder that the suspension of the disciplinary proceedings made the withdrawal irreceivable before the JAAB, that plea is irrelevant since the Organization's unilateral decision did not prevent the complainant from legitimately taking any step he wished during that suspension.

15. Furthermore, the Tribunal observes that, as the sequence of events set out above shows, the JAAB was in fact consulted on the contested sanction of discharge before the impugned decision of 17 November 2017 was taken. Although that consultation, which took place after the decision of 16 December 2015, would not have been capable of correcting the procedure if the JAAB's involvement prior to the application of the sanction had been legally required, the fact remains that, in the particular circumstances of the case, the complainant did, in essence, enjoy the safeguard of consultation of the JAAB.

16. The complainant criticises the ILO for having resumed the disciplinary proceedings without good reason in his view, although it had previously agreed to suspend those proceedings pending the outcome of the application for review referred to above.

However, the evidence shows that the complainant did not comply with the request made by the Organization in the letter of 15 July 2015 informing him of the suspension of the proceedings, and again in a letter of 28 August 2015, that he provide evidence of having actually filed that application and information as to how it had been dealt with by the French court. On the contrary, in emails dated 9 September and 23 October 2015, the complainant expressed his reluctance ultimately to file an application for review since that would have required his wife to agree to admit that she had made false accusations against him, laying her open to prosecution for fabricating charges. Although in his submissions the complainant states that the reluctance thus expressed merely echoed the advice given by the lawyers whom the couple had consulted on the matter and the Organization was therefore mistaken in considering that it reflected his own frame of mind, the Tribunal finds that the letters in question plainly show that the complainant did indeed wish to avoid filing the application at issue. Moreover, it is established that the application for review had still not been filed when the decision

to discharge the complainant was taken on 16 December 2015, even though five months had passed since the disciplinary proceedings had been suspended, and that the application was eventually filed only after that decision, on 11 January 2016.

The Tribunal therefore finds that the complainant has no grounds to argue that, by deciding to complete the disciplinary proceedings, the Organization breached the rights of the defence, the requirement of procedural fairness or the principles of good faith and the protection of legitimate expectations.

17. The complainant contends that he did not actually make the death threats or commit the assault against his wife which led the Director-General to impose the contested sanction of discharge following his conviction by a French court for those acts.

18. On this point, the complainant firstly submits that the judgment delivered by the *Tribunal correctionnel* on 6 February 2015 should not have been regarded by the ILO as properly establishing his guilt since, according to him, that judgment did not include a "proper statement of reasons" or specify on what evidence it was based.

However, although it is true that the statement of reasons in the judgment is highly succinct, the *Tribunal correctionnel* clearly stated that "it [was] clear from the evidence in the file and the oral submissions that the acts which the [complainant was] accused of having committed [were] proven"[*].

If the complainant wished to challenge that judgment, he could have lodged an appeal. However, he did not do so, with the result that the judgment became final. It follows that, far from having to be considered "null and void" as the complainant argues in his submissions, the judgment has *res judicata* authority, and the reasons advanced by the complainant for his decision not to appeal against it are, in any event, irrelevant in that regard.

Moreover, the evidence before the Tribunal shows that the application for review that the complainant eventually decided to submit, in the circumstances described above, was dismissed by the *Cour de révision*

[*] Registry's translation.

et de réexamen on 26 June 2017, before the impugned decision was adopted on 17 November 2017.

19. Paragraph 44 of the Standards of Conduct for the International Civil Service, which concerns officials' "[p]ersonal conduct" and provides that "acts that are generally recognized as offences by national criminal laws will normally also be considered violations of the standards of conduct for the international civil service", previously states that "[a] conviction by a national court will usually, although not always, be persuasive evidence of the act for which an international civil servant was prosecuted".

The complainant argues that the principle set out in the second phrase concerning the probative value of convictions by national courts applies, in the words of that phrase, only "generally" and "not always", and submits that, in the present case, the ILO was in a situation where it should have invoked that exception rather than accepting the offences of which he was accused as proven. However, it is well known that this restriction, placed on the principle in question when the Rules were adopted, was solely intended by the drafters to reserve the case of convictions in States where the courts do not offer the requisite safeguards of independence and procedural fairness. Since there is no doubt that the French legal system fulfils that requirement, the Organization – whose role plainly is not to assess whether a conviction by a national court is justified and which does not have the means to investigate conduct such as that in question in the present case by itself – rightly relied on the judgment of the *Tribunal correctionnel* and considered that the offences of which he had been accused had been proven.

20. In his attempt to undermine the probative value of that judgment, the complainant relies on statements later made by his wife to the Organization, according to which the accusations that she had made against him before the French authorities were unfounded. According to these new statements, the complainant's wife had, in particular, "exaggerated the incident" that occurred on 16 August 2014 during a quarrel between the couple regarding the management of their property in their country of origin and during which the acts on account of which she had initially stated that she had suffered the death threats and assault, leading to his conviction by the *Tribunal correctionnel*, had taken place.

However, the ILO was right in refusing to draw decisive conclusions from this new evidence. Firstly, an international organisation cannot be criticised for discounting the probative value of a person's testimony contradicting the accusations made by that same person before the national courts. That is particularly true in this case, since the complainant's wife wished that these new statements be taken into account without the knowledge of the national authorities concerned, in order to guard against possible prosecution for fabricating charges. Plainly, the ILO could not be complicit in such behaviour. Secondly, the truthfulness of the new statements was necessarily questionable, since the complainant's wife clearly had an interest in his continuing to work for the Organization, so that he could continue to provide financially for her and their children. Moreover, the "note for the file" summarising the meeting between the complainant's wife and the Director of HRD on 4 September 2015 shows that during that meeting, she did not conceal the fact that she had approached the Organization mainly out of fear of the serious risks that her husband's possible discharge posed to their family's future. Such fear is, of course, completely understandable and, in itself, legitimate, but it also inevitably casts doubt on the veracity of the new statements.

21. In addition, the Tribunal notes that the existence of the complainant's abuse of his wife is corroborated in the file, aside from the findings of the French court, by the fact that, by her own account, she was forced to take refuge in a social welfare shelter primarily for female victims of domestic violence in Geneva after the events of 16 August 2014. Indeed, the complainant does not dispute that fact, which is recorded in the aforementioned "note for the file" and mentioned by the Organization in its submissions.

22. Contrary to what the complainant argues in his brief, the contested sanction of discharge was hence not based on errors of fact or a failure to take material facts into consideration.

23. Continuing his arguments, the complainant submits that the conduct alleged could not be classified as a disciplinary offence since, firstly, it related to his personal life and not his professional duties and, secondly, it did not compromise his position or the Organization's image or interests.

However, the Tribunal cannot accept this argument for the following reasons.

24. Firstly, it should be recalled that, while international organisations cannot intrude on the private lives of their staff members, those staff members must nonetheless comply with the requirements inherent in their status as international civil servants, including in their personal conduct. This principle is, for example, laid down in paragraph 42 of the Standards of Conduct for the International Civil Service, which expressly states that "[i]nternational civil servants must [...] bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organizations". In the case of ILO officials, this principle also applies, in particular, pursuant to article 1.2 of the Staff Regulations, which states that "[o]fficials shall conduct themselves at all times in a manner befitting their status as international civil servants" and "[t]hey shall avoid any action [...] which may adversely reflect on their status".

Furthermore, the Tribunal has repeatedly stated in its case law that some private conduct may, on this account, legitimately lead to disciplinary action (see, for example, Judgments 1584, consideration 9, 2944, considerations 44 to 49, or 3602, consideration 13).

Moreover, it should be observed that, insofar as the acts of which the complainant was accused in this case constituted a criminal offence, they cannot be regarded, by definition, as being purely private in nature.

25. Secondly, the Tribunal finds that the complainant's conduct was in fact such as to reflect adversely on his position and compromise the Organization's image and interests.

Engaging in domestic abuse, which is not only a criminal offence but also strongly condemned by society, is a clear breach of the requirements of moral probity and decency that all international civil servants must respect. By its very nature, the conduct in question therefore adversely reflected on the complainant's status and position.

Moreover, any publicity given to such conduct was likely to compromise the reputation and image of the Organization, especially as the complainant held a senior position within it. This risk was all the more significant for the fact that the ILO's mandate, as entrusted to it by the international community, includes promoting gender equality and combating violence against women in the world of work, and, when seen against its pursuit of these objectives, it would obviously have been highly embarrassing for the Office if it had appeared to tolerate

one of its officials assaulting his wife. The offending conduct was therefore also such as to compromise the image and interests of the Organization.

In this regard, it should be pointed out that the fact that the complainant's conviction by the *Tribunal correctionnel* was exempted from entry in certificate No. 2 of his criminal record does not, in practice, exclude the possibility that third parties may nevertheless learn of that conviction.

26. The complainant submits that the contested sanction of discharge was tainted with an error of law since it was applied on account of the death threats and assault for which he had been convicted, even though the Organization itself was unaware of the details of those acts.

It is certainly true that the Office, which did not have access to the file of the criminal case dealt with by the French court and which, as mentioned above, had no means of investigating the acts in question by itself, only knew of them from the information contained in the judgment of 6 February 2015, which was not very detailed.

However, that information was sufficient to enable the Director-General to assess the seriousness of the complainant's offence under national law, in accordance with paragraph 44 of the Standards of Conduct for the International Civil Service, "depending on the nature and circumstances of [the] individual [case]", and it follows from the provisions of the same paragraph, cited in consideration 19 above, that the acts constituting that criminal offence could rightly be regarded as also constituting a breach of those standards by implication.

27. Thus, the complainant has no grounds to maintain that, in applying the contested sanction of discharge on account of the acts in question, the Director-General erred in assessing those acts as wrongful, or that his decision was affected by an error of law or an error of judgement arising from a failure to take account of relevant circumstances.

28. The complainant submits that the Director-General also violated the double jeopardy rule because, before applying the contested sanction of discharge, he had already decided to revoke his appointment as Director of the Abuja Office.

However, as the Tribunal has repeatedly stated, the double jeopardy rule, which precludes only the imposition of further disciplinary sanctions for acts which have already attracted a disciplinary sanction, does not prevent both disciplinary and non-disciplinary consequences from attaching to the same acts. That rule does not therefore prevent the organisation concerned from taking measures of various kinds, each corresponding to its interests in a particular area, in response to the same act or conduct by an official (see, in particular, Judgments 3126, consideration 17, 3184, consideration 7, or 3725, consideration 9).

Contrary to what the complainant asserts, the decision to revoke his appointment as Director of the Abuja Office cannot be construed as a disciplinary sanction in the present case. While that decision certainly resulted from the ILO's loss of confidence in the complainant on account of the conduct of which he was accused, its purpose was not to punish that conduct, but solely to address the objective difficulties which maintaining his appointment to a post of that kind would have caused the Organization in the circumstances.

It follows that the plea of a violation of the double jeopardy rule must be dismissed.

29. Lastly, the complainant argues that the decision to discharge him with notice was a "disproportionate sanction" in view of the degree of seriousness of the acts of which he was accused.

Under the Tribunal's case law, the disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct. However, its decision must always respect the principle of proportionality which applies in this area (see, for example, Judgments 3640, consideration 29, 3927, consideration 13, and 3944, consideration 12).

In this case, it should be noted that the *Tribunal correctionnel* gave the complainant a short sentence of 15 days' imprisonment, which was wholly suspended, and that it waived the requirement for the conviction to be entered in certificate No. 2 of his criminal record, which places the gravity of the acts of which he was found guilty in perspective. It should also be noted that the complainant had never faced any disciplinary sanctions during his career with the ILO until this point. However, the Tribunal takes the view that, given the specific nature of offences involving domestic violence, the general condemnation of such behaviour

and the resulting risk of harm to the Organization's reputation, the acts in question were sufficiently serious to warrant the complainant's discharge, especially as he was expected to demonstrate exemplary conduct in view of his high rank and level of responsibility in the Office. Furthermore, it should be pointed out that the sanction of discharge with notice, which the disciplinary authority chose to impose in this case, is not the most severe sanction in the Staff Regulations, since they also provide for the sanction of summary dismissal, which was initially proposed but ultimately not applied in this case.

Accordingly, the Tribunal considers that, by taking the impugned decision, the Director-General did not, in this case, impose a sanction on the complainant that was disproportionate to his acts.

30. It follows from the various considerations set out above that the decision of 16 December 2015 by which the Director-General imposed the sanction of discharge with notice on the complainant is not tainted with any of the flaws alleged.

31. The complainant also challenges the reprimand issued against him on 24 July 2015 for having concealed the criminal conviction by the *Tribunal correctionnel*.

In support of his claims relating to that decision, the complainant mainly submits, in essence, that the Director-General made an incorrect assessment of the facts underpinning it by considering that his failure to inform the Office of the conviction was wrongful. In this respect, he relies on the fact that the judgment of 6 February 2015 had provided, as already stated, that this conviction would not be entered in certificate No. 2 of his criminal record.

It is true that, under French law, the possibility of an exemption from an entry in certificate No. 2 which was applied in this case seeks, amongst other things, to prevent an administrative authority or employer from having direct access to the information that the person concerned has a criminal conviction. However, the judgment remains public, and there is nothing to stop that person from providing it or relaying its content to a third party.

The Tribunal considers that an international organisation is entitled to ask its officials to inform it of any criminal convictions against them and that the duties of good faith and integrity oblige them to reply truthfully to such requests.

In this case, the complainant, who was expressly asked by the ILO at the material time, in the context of the selection procedures for the posts of director of country office for which he had applied, whether he had been convicted of any criminal offence, must have been aware that he ought to inform the Organization, in a completely transparent manner, of the conviction in question when he replied. However, the evidence shows that when asked by the Director of HRD during an interview on 23 April 2015 about the outcome of the criminal proceedings of which the ILO had been informed on 19 November 2014 when the complainant was taken into police custody, he concealed the existence of a conviction against him. He denied that any issue continued to exist in this respect and presented the case as "closed", which, although he produced written confirmation from his former lawyer to that effect, can hardly be regarded as a true description of the legal situation arising from the judgment of 6 February 2015.

It must therefore be found that the Director-General was justified in imposing a sanction on the complainant on account of the breaches of good faith and integrity shown by that behaviour. The Tribunal refers in this respect to its case law, according to which "[c]ommon decency, good faith and honest dealing lie at the root of relations between employer and employee. Whoever ventures to ignore that does so at his own peril" (see Judgments 1764, consideration 14, and 2602, consideration 20).

32. The complainant's remaining arguments against the decision of 24 July 2015 are unfounded. Contrary to what the complainant submits, that decision, which clearly set out the misconduct of which he was accused, was properly reasoned and it does not appear that it was made without the Director-General taking into consideration all the relevant circumstances. Furthermore, it cannot be considered that, by issuing a reprimand, which is, after a warning, the least severe of the penalties provided for in the Staff Regulations, the Director-General imposed a sanction in the present case which was disproportionate to the complainant's misconduct.

33. The complainant's claims relating to the contested reprimand will therefore be rejected, without there being any need for the Tribunal to rule on the question of their receivability raised by the JAAB.

34. Finally, the complainant seeks the setting aside of the decision to revoke his appointment as Director of the Abuja Office and of the decision, announced on 3 November 2015, by which a third person was subsequently appointed to that post. However, the Tribunal notes that, although, in his grievance of 13 January 2016, the complainant expressed in passing his regret that he was not ultimately able to take up the position in question, that grievance was not formally directed against those decisions, and those decisions were not challenged as provided for in articles 13.2 and 13.3 of the Staff Regulations. The claims against them are therefore irreceivable under Article VII, paragraph 1, of the Tribunal's Statute for failure to exhaust the internal remedies available to officials of the Office before filing the complaint.

35. It follows from the various foregoing considerations that the second complaint must be dismissed in its entirety.

DECISION

For the above reasons,

1. There is no need to rule on the first complaint.

2. The second complaint is dismissed.

In witness of this judgment, adopted on 30 March 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 14 April 2021 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN DOLORES M. HANSEN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ