Organisation internationale du Travail
*Tribunal administratif*

International Labour Organization
*Administrative Tribunal*

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

**T. (Nos. 1, 2 and 5)**

***v.***

**ICC**

**139th Session** **Judgment No. 4947**

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mr P. T. against the International Criminal Court (ICC) on 4 April 2022 and corrected on 9 July 2022, the ICC's reply of 31 October 2022, the complainant's rejoinder of 22 March 2023 and the ICC's surrejoinder of 27 June 2023;

Considering the second complaint filed by Mr P. T. against the ICC on 29 April 2022 and corrected on 9 July 2022, the ICC's reply of 31 October 2022, the complainant's rejoinder of 22 March 2023 and the ICC's surrejoinder of 27 June 2023;

Considering the fifth complaint filed by Mr P. T. against the ICC on 15 December 2022 and corrected on 18 January 2023, the ICC's reply of 8 May 2023, the complainant's rejoinder of 6 September 2023 and the ICC's surrejoinder of 5 December 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decisions to reject his requests for the suspension of action on the decision to suspend him with pay and with immediate effect, and on the decisions to extend that measure, pending the outcome of the internal appeal procedures.

At the material time, the complainant worked as a Cooperation Adviser at grade P-4 in the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor of the ICC, under a fixed-term appointment.

On 11 October 2021 the Prosecutor orally informed the complainant that, having received allegations that the latter had made inappropriate comments, involving in particular breaches of his duty of confidentiality, he had decided to suspend him from duty with immediate effect. He asked the complainant to leave the building at once, escorted by his supervisor.

The following day, the complainant received written notice of that decision by email and by a letter delivered to him in person and signed for at his home address. In that letter, the Prosecutor stated that the allegations made against him concerned a discussion he had had on the morning of 11 October 2021 with members of a delegation from a State Party visiting the Court. The complainant was informed that the suspension decision, taken pursuant to Rule 110.5(a) of the Staff Rules of the Court and pending the outcome of disciplinary proceedings relating to those allegations, was made with immediate effect and with pay for a period of three months. The Prosecutor explained that the decision "[was] necessary in order not to prejudice the interests of the Office of the Prosecutor and the Court, to ensure the integrity of the consideration of the allegations made against [him], and because the alleged conduct [was] of such a nature to discredit and harm the reputation of the Office and the Court". In addition, the Prosecutor asked the complainant to immediately hand over to the Administration all property of the Court in his possession. He was also informed that his access to the Court's Intranet had been temporarily disabled and that he could only access the Court's premises with prior authorisation.

That same day, the complainant sent the Prosecutor an email asking to meet him so that he could set out his version of events. The complainant subsequently met with the Prosecutor on 15 October 2021.

On 20 October 2021 the complainant was notified of the Prosecutor's decision to refer the allegations made against him, together with a note of their meeting of 15 October 2021, to the Independent Oversight

Mechanism (hereinafter "the Mechanism") for an initial review, in accordance with Resolution ICC-ASP/19/Res.6 and paragraph 8 of Annex II to that resolution, concerning the Operational Mandate of the Mechanism.

On 22 October 2021 the Mechanism informed the complainant that an investigation had been opened into the allegations that he might have engaged in misconduct or unsatisfactory conduct. The Mechanism specified that it was alleged that the complainant had disclosed confidential and/or inappropriate information to two members of the delegation from a State Party on 11 October 2021 and that, if the allegations were found to be true, it could amount to unsatisfactory conduct within the meaning of Section 5 of the Code of Conduct for Staff Members and Staff Rule 110.1.

On 4 November 2021 the complainant submitted to the Appeals Board a request for review of the decision of 11 October 2021 suspending him from duty with pay.

On 6 December 2021 the Legal Adviser informed the complainant that the Prosecutor had decided to reject his request for review and to maintain the decision suspending him from duty with pay. The Legal Adviser stated in particular that the decision in question had been taken in accordance with Staff Rule 110.5 and that it was proportionate because the allegations made against the complainant were sufficiently serious to warrant immediate suspension.

On 17 December 2021 the complainant submitted to the Appeals Board a request for suspension of action on the decision suspending him from duty pursuant to Staff Rule 111.4(b). On 23 December the Legal Adviser presented the Prosecutor's views on the complainant's suspension request. He maintained in particular that the complainant had not met the requirements set out in Staff Rule 111.4(c) which, in his view, were cumulative.

That same day, the Mechanism issued its report on the complainant's case and found that there was sufficient evidence to conclude that the complainant had breached his confidentiality obligation and that his conduct could amount to a breach of his duty of loyalty.

On 30 December 2021 the Appeals Board issued its report on the complainant's suspension request of 17 December. It stated that the requirements set out in Staff Rule 111.4(c) – namely that the decision the suspension of which is requested has not been implemented and that it would cause irreparable injury to the staff member – were cumulative. The Board recommended that the complainant's request be rejected as the first requirement of that rule was not satisfied, given that the decision in question had already been implemented even before the complainant submitted his request for review.

On 5 January 2022 the Legal Adviser notified the complainant of the Prosecutor's decision of the same date to follow the recommendation of the Appeals Board and, accordingly, to reject his request for the suspension of action. On 4 April 2022 the complainant filed a complaint – his first – before the Tribunal, challenging that decision.

Also on 5 January 2022, the complainant lodged an appeal against the Prosecutor's decision of 6 December 2021 to reject his request of 4 November 2021 for a review of the decision to suspend him from duty with pay and with immediate effect.

On 10 January 2022 the Legal Adviser informed the complainant of the Prosecutor's decision of that same date to extend his suspension with pay by three months, effective from the following day. The Legal Adviser explained to the complainant that the Mechanism had concluded its investigation and had submitted its report to the Prosecutor, who was in the process of reviewing it to determine whether the matter should be pursued further. The complainant was also told that the reasons underlying the original suspension remained valid and that, until the Prosecutor's concerns about the allegations in question were alleviated, the suspension remained necessary in order not to prejudice the interests of the Office of the Prosecutor and the Court, and to ensure the integrity of the consideration of the allegations given that the alleged conduct was of such a nature to discredit and harm the reputation of the Office and of the Court.

On 11 January 2022 the Legal Adviser sent the complainant the Mechanism's report which had been issued on 23 December 2021 and the complainant responded on 27 February 2022. The complainant was

then informed that, in the light of that report, the Prosecutor had decided to pursue the matter in accordance with Section 2.6 of Administrative Instruction ICC/AI/2008/001 of 5 February 2008 on Disciplinary Procedures.

On 14 January 2022 the complainant submitted a second suspension request to the Appeals Board, this time in relation to the Prosecutor's decision of 10 January 2022 to extend his suspension with pay. The complainant submitted in particular that the decision in question caused him irreparable injury and was disproportionate, unjustified and unfounded. Furthermore, the complainant pointed out that he had only been notified of that decision on 10 January at 5.46 p.m. and that it came into force the next day, which prevented him from requesting a suspension of action on the decision before it was implemented. The Prosecutor presented his views on 26 January. He asserted in particular that the complainant's request was irreceivable because, contrary to the requirements in Staff Rule 111.4(a) and (b), he had not yet submitted a request for review of the extension decision the suspension of which he was seeking. The Prosecutor also stated that the request was unfounded since the complainant did not meet the requirements set out in Staff Rule 111.4(c).

In its report of 28 January 2022 relating to the complainant's second suspension request, the Appeals Board found that, having regard to Staff Rule 111.4(a) and (b), such a request could only be made if the administrative decision for which suspensive effect was sought had been challenged by means of a request for review. It explained that, as a consequence, the failure to make such a challenge should, in principle, lead it to conclude that the request for the suspension of action was not receivable. However, the Appeals Board considered that, in this case, it could legitimately rule on the merits given that the decision to extend the complainant's suspension was simply an extension of the initial decision to suspend him. Nevertheless, on the merits, the Board concluded that the request for the suspension of action had to be rejected because the extension decision had already been implemented and that, therefore, the first requirement of Staff Rule 111.4(c) was not met. The Board did, however, underline the fact that the complainant

was only informed of the decision to extend his suspension the day before it came into effect, and it urged the Prosecutor to communicate any similar decisions in a more timely fashion in order to allow the complainant sufficient time to consider and act on his legal options. In addition, the Board recommended that the Prosecutor communicate its recommendation to the complainant right away or, alternatively, that he remind the complainant, as soon as possible, of his right to request a review of the extension decision within 30 days of its adoption.

The Legal Adviser notified the complainant on 31 January 2022 of the Prosecutor's decision to reject his request for suspension of action on the decision extending his suspension. He noted that the Prosecutor did not share the Appeals Board's finding that there was no need, in this case, for a prior challenge to the decision the suspension of which was sought and considered that the lack of challenge should have led the Board to reject the request as irreceivable. The complainant filed a second complaint before the Tribunal to impugn this decision on 29 April 2022.

On 9 February 2022 the complainant submitted a request for review of the decision of 10 January 2022 to extend his suspension with pay. That request was rejected on 14 March 2022.

On 1 April 2022 the Legal Adviser informed the complainant of the Prosecutor's decision to further extend his suspension with pay for three months from 11 April 2022. The complainant was also reminded that the Mechanism had completed its investigation and submitted its report to the Prosecutor, who had decided, in the light of the report's conclusions, to pursue the matter and to refer it to the Disciplinary Advisory Board on 11 March 2022.

The complainant submitted on 7 April 2022 a request to the Appeals Board for action to be suspended on this new extension. The complainant stated in particular that the decision in question caused him irreparable injury and was disproportionate, unjustified and unfounded. The Board informed the Prosecutor of this on the same day and invited him to submit his observations thereon. That same day, the Appeals Board issued its report on the complainant's appeal against the decision of 11 October 2021 to suspend him with pay and with immediate effect,

and recommended that the appeal be dismissed. On 4 May 2022 the complainant received notification of the Prosecutor's decision, bearing the date 6 May *(sic)*, to follow the recommendations made by the Appeals Board and, therefore, to reject his appeal against the decision to suspend him.

The Disciplinary Advisory Board delivered its report to the Prosecutor on 9 June 2022. The Board considered, inter alia, that the evidence did not support a finding that the complainant had breached his confidentiality obligation, nor that he had shared opinions with external parties in contradiction of the Prosecutor's positions and decisions in order to undermine the State Party's confidence in the Office. The Board noted that, if the Prosecutor considered nonetheless that the evidence proved unsatisfactory conduct on the part of the complainant, it took the view that, since the complainant's suspension – which had lasted for eight months – had been decided without a preliminary investigation, it was more than sufficient sanction in the circumstances, along with a written censure.

On 10 June 2022 the complainant submitted to the Appeals Board a request for review of the decision of 1 April 2022 to extend, for a second time, his suspension from duty with pay. That request was rejected by the Prosecutor on 14 July 2022.

The complainant was informed on 8 July 2022 that the Prosecutor had decided to reject the findings of the Disciplinary Advisory Board and to impose upon him the disciplinary measure of summary dismissal with immediate effect.

On 19 July 2022 the Appeals Board conveyed to the complainant the Prosecutor's observations, presented by the Legal Adviser on 8 April 2022, concerning the request for suspension of action on the decision of 1 April to extend his suspension from duty with pay for a second time. The Board invited the complainant to indicate, no later than 20 July, whether he wished to reply. In his observations, the Prosecutor asserted that, as with the suspension request submitted by the complainant on 14 January 2022, the new suspension request was irreceivable because, contrary to the requirements of Staff Rule 111.4(a) and (b), the complainant had failed to first submit a request for review

of the extension decision before seeking its suspension. He also stated that this request was unfounded since the complainant did not meet the cumulative requirements set out in Staff Rule 111.4(c).

On 9 August 2022 the complainant submitted his reply and, as a preliminary matter, drew the attention of the Appeals Board to the unreasonable delay in communicating the Prosecutor's observations. He went on to refute the Prosecutor's argument concerning the irreceivability of the request for the suspension of action. The complainant insisted that the request was well founded and claimed damages for the injury that he considered he had suffered.

In its report of 19 August 2022, the Appeals Board indicated, first of all, that it had first met in May 2022 but that, while its report was being finalised, its members had been informed that the Prosecutor's observations had not been transmitted to the complainant. The Board did not address the organisation's arguments about the receivability of the complainant's request, merely stating that it considered that the decision to further extend the decision to suspend the complainant "simply" extended the initial decision suspending him. As to the merits, the Board found that the complainant's suspension request satisfied the first cumulative requirement in Staff Rule 111.4(c), as the decision had not yet been implemented when the complainant submitted his request. However, it found that the request did not satisfy the second requirement of Staff Rule 111.4(c), because the complainant had not demonstrated the existence of irreparable injury. As regards the complainant's allegations of unreasonable delays in the procedure, the Board pointed out that it had transmitted the Prosecutor's observations to him as soon as it became aware that he had not received them and that it had given him the opportunity to reply to them. It stated that the delays had not affected its review of the request and unanimously recommended that the suspension request and the claims for damages be rejected.

On 21 September 2022 the Legal Adviser notified the complainant of the Prosecutor's decision to partly follow the recommendation of the Appeals Board and, accordingly, to reject his request to suspend the decision of 1 April 2022 on the grounds of irreceivability. The Legal

Adviser noted that the Prosecutor shared the Appeals Board's conclusion as to the lack of irreparable injury. However, the Prosecutor maintained that the request for the suspension of action was irreceivable, because such a request could only be made in respect of a decision that had already been challenged by means of a request for review. Furthermore, the complainant was informed that the Prosecutor did not share the Board's conclusion that the decision in question was simply an extension of the initial decision. On 15 December 2022 the complainant filed a fifth complaint before the Tribunal to impugn this decision.

In his first complaint, the complainant asks the Tribunal to retroactively set aside the Prosecutor's decision dated 5 January 2022. He claims damages of 10,000 euros for the injury that he considers he has suffered as a result of the breach of his right to an "efficient" remedy and of the principle of equal treatment. He also seeks damages of 5,000 euros for the injury that he considers he has suffered as a result of the breach of the duty of care and protection. The complainant also seeks the award of costs, which he assesses as at least 3,000 euros.

In his second complaint, the complainant asks the Tribunal to retroactively set aside the Prosecutor's decision dated 31 January 2022. He claims damages of 12,000 euros for the injury that he considers he has suffered as a result of the breach of his right to an "efficient" remedy and of the principle of equal treatment, as well as damages of 8,000 euros for breach of the duty of care, protection and good faith. The complainant also seeks the award of costs, which he assesses as at least 3,000 euros.

In his fifth complaint, the complainant asks the Tribunal to set aside the Prosecutor's decision dated 21 September 2022. He claims damages of 20,000 euros for the injury that he considers he has suffered as a result of the continued breach of his right to an effective remedy and the unlawfulness of the impugned decision. He also seeks damages of 5,000 euros for the injury that he considers he has suffered as a result of the breach of the duty of care and good faith, as well as compensation of 3,000 euros on account of the length of the procedure, which he regards as excessive. The complainant also seeks an award of costs,

which he assesses as at least 3,500 euros, increased to 5,000 euros in his rejoinder.

The ICC asks the Tribunal, in its respective replies, to conclude that the complainant's complaints are irreceivable and unfounded. The Court also asks the Tribunal to order the complainant to pay his legal costs and bear the costs of the proceedings, in particular all expenses incurred for the case. Subsidiarily, it asks the Tribunal to declare the complaints abusive.

## CONSIDERATIONS

1. The complainant is a former staff member of the International Criminal Court (ICC) who joined the organisation on 2 September 2003. At the material time, he held the role of Judicial Cooperation Adviser in the Jurisdiction, Complementarity and Cooperation Division of the Office of the Prosecutor of the Court. An incident which occurred towards the end of the morning of 11 October 2021 led to the decision by the ICC of the same day to suspend him from duty with pay and with immediate effect and, subsequently, to impose on him the disciplinary sanction of summary dismissal for serious misconduct on 8 July 2022.

That incident gave rise to five complaints filed by the complainant before the Tribunal. Three of those complaints, being the first, second and fifth, are addressed in this judgment. They concern the decisions of the Prosecutor of the ICC to reject the complainant's requests for the suspension of action on the decision to suspend him with pay and with immediate effect on 11 October 2021 for a period of three months, and on the decisions to extend that suspension on two occasions, also for three months, pending the outcome of the internal appeal procedures that were underway.

The two other complaints concern, respectively, the decision of 11 October 2021 imposing a measure on the complainant suspending him with pay and the decision of 8 July 2022 summarily dismissing him for serious misconduct. Those other complaints are addressed in Judgments 4948 and 4949, also delivered in public this day.

2. Given that the complainant's first, second and fifth complaints raise similar questions of law and of fact and that they all relate to the organisation's refusal to suspend the complainant's suspension during the investigation process and the disciplinary proceedings which led to his summary dismissal, both the complainant and the ICC indicated and agreed that they should be dealt with jointly in the same judgment. The parties note in this regard that each of the complaints involves questions of law relating to the interpretation and the application of Rule 111.4 of the ICC's Staff Rules, which deals with requests for the suspension of action on an administrative decision, in the context of a decision imposing a measure on a staff member suspending him from duty with immediate effect.

The Tribunal considers it appropriate to proceed in this manner in the present case since these complaints essentially seek the same redress, rest on broadly similar arguments and, for the most part, raise the same legal issues.

However, the ICC's request that the third complaint, concerning the decision to suspend the complainant with pay, be also joined to these three complaints, which is opposed by the complainant, cannot be granted in the circumstances. Although the key events underlying the four cases are substantially the same, the complainant rightly notes that different legal questions arise in that other complaint, which warrant their own examination. The Tribunal considers that it should therefore be dealt with separately.

3. For the purposes of the present judgment, suffice it to indicate that, on 11 October 2021, around midday, the Prosecutor of the ICC orally informed the complainant that he had just received allegations that the latter had made inappropriate comments during a conversation he had just had over coffee with a colleague from the Prosecutor's Office and two members of an external delegation from a State Party visiting the Court. The Prosecutor indicated to the complainant in particular that the information received involved an alleged breach of confidentiality regarding a situation that the Court was dealing with at the time and an alleged failure to abide by the standards of conduct

expected of a member of staff of the Prosecutor's Office. He informed the complainant that he had decided, as a result, to suspend him from duty with immediate effect. In the written notice of suspension delivered to the complainant the following day, that is on 12 October 2021, the Prosecutor also explained to him that the measure had been taken to ensure the integrity of the consideration of the allegations made and in the interests and for the protection of the reputation of the Court and the Office.

4. Rule 111.4 of the Staff Rules of the ICC is the relevant rule in connection with the complainant's requests for suspension of action on the decision to suspend him with pay and with immediate effect, and the decisions to extend that suspension on two occasions, pending the outcome of the internal appeal procedures that were underway. That rule, which forms part of Chapter XI on "Appeals", provides as follows:

> **"Rule 111.4: Suspension of the administrative decision during appeal**
>
> (a) Neither a request for administrative review, an attempt at conciliation, nor the filing with the Appeals Board of an appeal against a decision resulting from a review shall have the effect of suspending action on the contested decision.
>
> (b) Notwithstanding paragraph (a), a staff member may request a suspension of action on such a decision by writing to the Appeals Board Secretary, setting out the relevant facts and how implementation would directly and irreparably injure the staff member's rights.
>
> (c) Upon receipt of such a request, the Appeals Board shall hear the request promptly and expeditiously and consider the views of the appealing staff member, as well as of the Registrar or the Prosecutor, as appropriate. If the Appeals Board determines that the decision has not been implemented, and that its implementation would result in irreparable injury to the staff member, it may recommend to the Registrar or the Prosecutor, as appropriate, the suspension of action on that decision until the time limits in staff rule 111.1 have passed without an appeal being filed or, if an appeal is filed, until a final decision on the appeal is made.
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> (d) The decision of the Registrar or the Prosecutor, as appropriate, on a recommendation under paragraph (c) shall be final and shall not be subject to appeal within the Court."

Rule 111.1, to which paragraph (c) of Rule 111.4 refers, additionally provides as follows:

"**Rule 111.1: Appeals against administrative decisions**

(a) Every staff member shall have the right to appeal against an administrative decision alleging the non-observance of his or her terms of appointment, including all pertinent regulations and rules.

(b) A staff member who wishes to exercise his or her right to appeal against an administrative decision shall first submit a request in writing to the Secretary of the Board, within thirty days of notification of the decision, for a review of the decision by the Registrar or the Prosecutor, as appropriate.

(c) In reviewing an administrative decision, the Registrar or the Prosecutor, as appropriate, may, with the consent of the staff member concerned, seek the assistance of a member of the Appeals Board with a view to resolving the case. This procedure shall be without prejudice to the staff member's right to appeal to the Appeals Board if the issue cannot be resolved by conciliation.

(d) After the review, the Registrar or the Prosecutor, as appropriate, shall inform the staff member in writing of his or her decision. A staff member who wishes to appeal against the decision resulting from the review shall do so in writing to the Secretary of the Board within thirty days of notification of the decision.

(e) A staff member shall be entitled to be represented or assisted by a staff member or a former staff member of his or her choosing during the course of appeals proceedings at his or her own expense."

5. In its report of 30 December 2021, the Appeals Board recommended that the complainant's first suspension request, submitted on 17 December 2021, be rejected on the grounds that the suspension decision of 11 October 2021 had already been implemented. On 5 January 2022 the Prosecutor chose to follow that recommendation and decided to reject that first suspension request.

With regard to the second suspension request, which this time related to the decision to extend the initial suspension and was submitted by the complainant on 14 January 2022, the Appeals Board also recommended its rejection on the grounds that the extension decision, notified by the organisation on 10 January 2022, had been implemented by the time that the complainant submitted his request.

Although the Prosecutor stated, on 31 January 2022, that he agreed that this second suspension request should be rejected on the grounds that the measure had been implemented, he nonetheless expressed his disagreement with the suggestion made by the Appeals Board in its report of 28 January 2022 that, because the extension was simply an extension of the initial decision, the lack of a request for review of the administrative decision extending the suspension, contrary to the requirements of Staff Rule 111.1(b), did not render the complainant's second suspension request irreceivable.

Lastly, with regard to the third suspension request, which related to the second extension of the suspension from duty and was submitted by the complainant on 7 April 2022, the Appeals Board reiterated, in its report of 19 August 2022, that the decision to further extend the suspension was still, in its view, simply an extension of the initial decision and that the lack of a prior request for review did not preclude the approach taken by the complainant. However, the Board noted that, although in this third case the complainant had submitted his request before the decision in question had been implemented, the second requirement of Staff Rule 111.4(c) was not satisfied because the complainant had failed to demonstrate that he had suffered irreparable injury. Once again, the Prosecutor agreed that the complainant had failed to demonstrate irreparable injury but disagreed with the Board's suggestion that the extension decision was simply an extension of the initial decision to suspend the complainant. The Prosecutor rejected the request on account of both the failure to demonstrate irreparable injury and the failure to submit a prior request for review in due time.

6. In support of his complaints, the complainant essentially puts forward three pleas to challenge the decisions to reject his requests for the suspension of action on the decision to suspend him with pay and with immediate effect, and the two subsequent decisions to extend that suspension.

First, according to the complainant, the strict application of the requirements of Staff Rule 111.4 in the context of a measure suspending him with pay and with immediate effect denied him his right to an

effective remedy. In addition, the ICC committed an error of law in its interpretation of the requirement for a prior request for review in such a situation and an error of fact in its interpretation of the requirement for irreparable injury in the complainant's situation.

Secondly, the application of Staff Rule 111.4 in the circumstances of the case constitutes a breach of the principle of equal treatment.

Thirdly, there was a breach of the duty of care and good faith on the part of the organisation in its interpretation and application of Staff Rule 111.4.

Additionally, as regards his fifth complaint, concerning his request to suspend the second extension of the measure suspending him from duty, the complainant also claims that the organisation breached its obligation to deal with his internal appeal within a reasonable time.

7. The ICC firstly contests the receivability of all three complaints. It maintains that, in view of the wording of Staff Rule 111.4(d), since final decisions on requests for the suspension of administrative decisions are not subject to appeal within the legal framework of the Court, any appeal brought before the Tribunal against such a decision is irreceivable. According to the organisation, Staff Rule 111.5, which provides for a right of appeal to the Tribunal, applies only to appeals against final administrative decisions within the meaning of Staff Rule 111.3(g).

Staff Rule 111.5 provides as follows:

> "**Rule 111.5: Appeal to the administrative tribunal of the International Labour Organization**
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> A staff member may appeal to the Administrative Tribunal of the International Labour Organization within ninety calendar days of the final decision by the Registrar or the Prosecutor, as appropriate, pursuant to staff rule 111.3(g), or the advice of the Appeals Board in the case of no final decision, also pursuant to staff rule 111.3(g)."

The Tribunal recalls that the rules on the receivability of complaints filed before it are determined exclusively by its own Statute (see, for example, Judgments 4126, consideration 3, or 3889, consideration 3). Since the three impugned decisions, which are final decisions according

to Staff Rule 111.4, are final for the purposes of Article VII, paragraph 1, of the Tribunal's Statute, the Tribunal considers that the objection to receivability raised by the ICC must be rejected.

In Judgment 3860, the Tribunal rejected a similar argument and concluded that the rejection of a request for the suspension of action made pursuant to Staff Rule 111.4(b) was indeed a final decision within the meaning of its Statute. In considerations 4, 5 and 6 of that judgment, the Tribunal stated as follows in this regard:

> "4. The first legal issue is thus whether a decision to reject a request for the suspension of action under Staff Rule 111.4(b) is a final decision such as to render it amenable to challenge by way of a complaint to the Tribunal. [...]
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> 5. Whether a decision is a final decision is a question raised by Article VII, paragraph 1, of the Tribunal's Statute that declares a complaint is not receivable unless the decision impugned is a final decision. The case law of the Tribunal establishes two principles. The first is that for a decision to be final it cannot, at least in the ordinary course, be amenable to internal appeal or review or further internal appeal or review. In the present case, Rule 111.4(d) makes it clear that there is no further appeal against a decision of, relevantly, the Registrar on the request for the suspension of action. Accordingly, the Registrar's rejection of the complainant's request was final.
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> 6. The second principle is that a decision, to be a final decision for the purposes of Article VII, paragraph 1, must of itself have legal effect (see, for example, Judgments 2201, consideration 4, and 3141, consideration 21). In the present case, the refusal of the request for suspension of action had, of itself, a legal effect in that the decision to abolish the complainant's post and terminate his appointment remained legally effective. In these proceedings it is unnecessary to determine whether there were one or two decisions. If the request for the suspension of action had been decided in the complainant's favour, the abolition and termination decision would cease, for the time being, to have legal effect at least after the nominated date for the abolition and termination, namely 20 October 2015. Thus the rejection of the request had legal effect, even if conditional on the decision taking effect on 20 October 2015. In this respect it was a decision which could constitute a final decision.
>
> The only qualification to the preceding conclusion arises from the Tribunal's judgments which distinguish between a number of steps leading to a final decision and the final decision itself. Ordinarily the steps, while they may have the appearance of being a decision, are not treated as a final decision but can be challenged in a challenge to the final decision itself (see,

> for example, Judgment 3433, consideration 9). It might be thought that a refusal of a request for the suspension of action is a step leading to a decision arising from the internal appeal. However the Tribunal has recognised that this approach has to be applied with some care (see Judgment 2366, consideration 16). In the present case the request for the suspension of action and the decision rejecting it were a quite discrete step in the internal appeal requiring the application of specific criteria. The final decision of the Registrar in this matter arising from the internal appeal will not subsume the decision on the request for suspension. This is to be contrasted with proceedings where the steps are subsumed in the final decision and can be challenged when challenging that final decision. In the result, the rejection of the request for the suspension of action was a final decision."

The Tribunal points out that the same is true of a decision to reject a request for the suspension of action on an extension of a measure suspending a staff member from duty. As the Tribunal noted in Judgment 4658, consideration 2, where a measure of suspension has been extended, the Tribunal must determine whether the conditions for each extension decision were met at the time that decision was taken (see also in this regard Judgment 4586, consideration 11). It follows that, in such cases, extension decisions constitute final decisions and, contrary to what the Appeals Board stated in its reports on the requests to suspend action on the two extensions of the initial suspension measure decided by the organisation, are not simply extensions of that measure.

8. Next, the ICC contends that the second and fifth complaints are irreceivable because the complainant did not submit a request for review of the extension decisions either prior to or simultaneously with his requests for suspension of the measure imposed. However, since, in his written submissions, the complainant addresses that argument in the context of his first plea, relating to the breach of his right to an effective internal appeal – and, moreover, in his fifth complaint, he describes the organisation's proposed interpretation of the relevant provisions of the Staff Rules as an error of law – the Tribunal will address that issue as part of its examination of that plea, together with the other conditions for the application of Staff Rule 111.4 to which the complainant objects.

9. With regard to that first plea, the complainant submits firstly that the requirement in the first condition of Staff Rule 111.4(c), in other words that "the decision has not been implemented", deprives staff members of their right to an "efficient" remedy where a suspension measure with immediate effect is imposed on them under Staff Rule 110.5 during disciplinary proceedings. According to the complainant, in such a case, as happened in his own situation, satisfying this condition would always be an impossibility where a suspension measure imposed during disciplinary proceedings is immediate. This renders pointless the mechanism for seeking the suspension of action of an administrative decision and, consequently, the internal means of redress available to staff members in that regard. In his written submissions, the complainant states that, from his point of view, the initial decision to suspend him with immediate effect taken on 11 October 2021 and the decision of 10 January 2022 to extend that suspension for the first time had been implemented, from the moment of their notification, on the first day of their application.

The ICC contends that the wording of Staff Rule 111.4(c) is clear and unambiguous and that the harsh consequences of its application do not render the resulting rejection decision unlawful. It adds that the fact that the measure could not be suspended due to its immediate implementation does not mean that the complainant was deprived of his right to an effective remedy. On the contrary, the evidence in all three cases indicates that the appeals lodged by the complainant underwent a full and thorough review, both at the Appeals Board stage and at the time that the organisation took its decision. According to the ICC, it is sometimes necessary to apply a suspension decision forthwith with immediate effect and the fact that this condition was not satisfied in the context of the first and second complaints does not mean that there was any breach of the right to an effective internal appeal.

The Tribunal notes firstly that, in the case of the complainant's first complaint, the request for suspension of action on the decision to suspend him from duty was submitted 67 days after that suspension decision was taken and put into effect. In the case of the complainant's second complaint, the period was much shorter, that is three days.

The Tribunal also finds that, in each of those situations, when the complainant submitted his suspension request, the decision to suspend him from duty with pay for a period of three months continued to have legal effect for the remainder of the period in question. Although the complainant himself is mistaken on this point, the decisions must therefore be regarded as not having been wholly implemented, so that the requirement of Staff Rule 111.4(c) was in fact met.

The Tribunal considers that the Appeals Board committed an error of law in finding that the decisions of 11 October 2021 and 10 January 2022 had been implemented as soon as they took effect, which, in the Board's view, meant that the first requirement of Staff Rule 111.4(c) was not met.

10. This error renders the Prosecutor's decision of 5 January 2022, impugned in the first complaint, unlawful, since it was taken on the basis of the Appeals Board's opinion and rested on the sole finding that the suspension from duty had been implemented.

However, while the complainant's right to an effective remedy may have been thereby affected to a certain extent, the Tribunal considers that he did not suffer any substantive injury as a result. As can be seen from the discussion below, the suspension request made by the complainant did not, in any event, comply with the requirement of Staff Rule 111.4 to demonstrate the existence of an irreparable injury and therefore unequivocally had to be rejected.

11. By contrast, the Prosecutor's decision of 31 January 2022, impugned in the second complaint, rested both on the finding that the decision of 10 January 2022 to extend the suspension from duty had been implemented, and on the failure to have previously submitted a request for review. As can be seen from the discussion below, this second ground was well founded. In addition, this ground – compounded with the lack of irreparable injury – was of itself sufficient to justify the rejection of the complainant's request. The Prosecutor's decision of 31 January 2022 was therefore not unlawful.

12. Remaining with this first plea, the complainant goes on to submit that both the Appeals Board and the ICC committed an error of law in suggesting that any suspension request made pursuant to Staff Rule 111.4(c) is subject to the prior or simultaneous submission of a request for review, as required by Staff Rule 111.1(b). In the present case, although, in the context of his first complaint, the complainant did submit a request for review of the decision of 11 October 2021 suspending him from duty before submitting the request to suspend action on that measure, it was not until 26 and 64 days after the respective suspension requests that he did so in the context of his second and fifth complaints.

However, the Tribunal considers that it is in fact clear from Staff Rules 111.1(b) and 111.4(c), firstly, that a request for the suspension of action on an administrative decision may be made at the time of an appeal and, secondly, that the right to bring an appeal is, in accordance with Staff Rule 111.1(b), conditional on the staff member having "first" submitted a request in writing to the Secretary of the Board for a review of the decision in question by the Prosecutor. Although the complainant had indeed submitted a request for review before submitting his request for the suspension of action on the decision at issue in his first complaint, he did not do the same in relation to the decisions at issue in his second and fifth complaints.

The Tribunal cannot accept the complainant's argument that the relevant provisions of the Staff Rules were interpreted narrowly given that, under Staff Rule 111.4(c), it is possible for a recommendation to be made to suspend action on the decision in question "until the time limits in [S]taff [R]ule 111.1 have passed without an appeal being filed". However, the provision relied on by the complainant, the purpose of which is to determine the last date on which action on an administrative decision may be suspended if the Appeals Board considers suspension to be warranted, has no bearing on the conditions for the submission of a suspension request. It is apparent from Staff Rule 111.1(b) that an appeal is only receivable if it has been preceded by a request for review. In this regard, the complainant appears to confuse a request for review with an appeal, the two being – as has just

been explained – distinct and successive stages of the same internal appeal procedure.

13. As regards the decision at issue in his fifth complaint, the complainant submits, lastly, that the Appeals Board and the organisation erred in the legal characterisation of the facts in concluding that there was no irreparable injury in his situation. In that respect, the complainant refers to the "irretrievable impact" of the second extension of the suspension imposed on him in terms of psychological injury and the considerable adverse effect on his personal and professional dignity. He asserts that the damage to his career and reputation is irreparable because of the nature of his duties.

However, in Judgment 3860, consideration 8, the Tribunal stated the following in relation to this further requirement of Staff Rule 111.4(c):

> "8. [...] having regard to the terms of Rule 111.4(c) properly construed, a condition precedent to agreeing to a request to suspend action is that the staff member would suffer irreparable injury if the challenged decision was implemented. Both the Appeals Board and the Registrar discussed, at length, what was meant by 'irreparable' injury and their views differed in a number of respects. It is unnecessary to repeat or discuss their respective analyses. This question has been addressed by the Tribunal in Judgment 1883, consideration 5. 'Irreparable' injury or harm occurs only where the injury or harm cannot be 'compensated by financial damages'. The harm or injury identified by the complainant including damage to his career and reputation as well as his inability to continue working at the ICC can be compensated by financial damages. [...]"

When assessing the injury suffered by the complainant, the Appeals Board and the organisation simply followed the guidance set by this case law and concluded that the irreparable nature of the injury had not been established. The Tribunal adds that, if there had actually been irreparable injury, it would be difficult to reconcile that assertion with the fact that the complainant waited 67 days from the initial suspension decision of 11 October 2021 before making his first request for the suspension of action on the decision in question.

The Tribunal considers that an error in the legal characterisation of the facts, as alleged by the complainant, has not been established. In the circumstances of the case, the moral or psychological injury identified by the complainant, including damage to his career and reputation, was indeed an injury which could, if applicable, be compensated by financial damages.

14. It follows from the foregoing considerations that the first plea must be rejected.

15. As regards the second plea, relating to a breach of the principle of equal treatment, the complainant submits that the ICC treats staff members who are suspended with immediate effect differently from those for whom the measure referred to in the relevant administrative decision is implemented later. According to the complainant, it should be possible for any staff member to request the suspension of action on an administrative decision which adversely affects her or him, regardless of the nature of the decision being challenged or the conditions for its implementation.

However, the Tribunal notes that this plea rests on the misinterpretation of Staff Rule 111.4(c) identified in considerations 9 and 10 above and that a staff member suspended from duty with immediate effect does in fact have the ability to request the suspension of action on that measure. While it is true that, in the present case, with regard to the decisions at issue in the first and second complaints, the Appeals Board and the Prosecutor incorrectly maintained that the decision the suspension of which the complainant was seeking had already been implemented, that does not mean that there was a breach of the principle of equal treatment. The Tribunal has consistently held that the existence of the same or similar positions in fact and in law is a condition precedent to the engagement of the legal principle of equal treatment (see, for example, Judgments 4361, consideration 10, 4359, consideration 10, or 4157, consideration 13, and the case law cited therein). A staff member whom the competent authority considers should be immediately suspended from duty, in view of the nature of the allegations made against her or him, or any other relevant matters,

is not in the same or a similar position as a staff member who has been given a deferred suspension or, *a fortiori*, who is the subject of any other decision administrative of that kind.

The second plea must therefore be rejected.

16. As regards the third plea, concerning a breach by the organisation of its duties of care, protection and good faith, the complainant's arguments essentially refer back to the matters of which he complains with regard to the ICC's application of the requirements set out in Staff Rule 111.4(c). However, since, as is clear from the foregoing considerations, the Tribunal considers that the complainant has misconstrued the issue of compliance with those requirements, it must conclude that his allegations of a breach by the organisation of its duties of care, protection and good faith are not substantiated.

The third plea is also rejected.

17. Lastly, with regard to the argument, raised by the complainant in the context of his fifth complaint, that the length of the internal appeal procedure was unreasonable in this case, the Tribunal notes that Staff Rule 111.4(c) provides that "[u]pon receipt of [the] request", the Appeals Board is to "hear the request promptly and expeditiously". As the complainant rightly asserts, it is clear that this wording and also the nature of the suspension request in question require the Board to handle such requests swiftly.

The Tribunal notes in this regard that the complainant's third suspension request was lodged on 7 April 2022 but that the Appeals Board's report was not finalised until 19 August 2022 and the complainant only notified of the Prosecutor's final decision, impugned in the fifth complaint, on 21 September 2022. While it is apparent from the written submissions that the Prosecutor made his initial observations on the suspension request on 8 April, it was only on 19 July that the Appeals Board realised that the complainant had not received them, that is after the decision had been taken to summarily dismiss him for serious misconduct on 8 July 2022. It also appears that the first time the

Board met was on 17 May 2022, almost a month and a half after the suspension request was lodged.

The Tribunal considers that this delay of more than five months, in the particular circumstances of a suspension request submitted on the basis of Staff Rule 111.4, was unreasonable. Although the Appeals Board is a body independent of the Office of the Prosecutor of the ICC, the organisation is still responsible for ensuring that the internal appeal procedure moves forward at a reasonable speed and, where applicable, must answer for the consequences of failing to meet that obligation (see, for example, Judgments 4284, consideration 8, 2768, consideration 6(a), 2522, consideration 7, and 2196, consideration 9).

However, the Tribunal recalls that the fact that there was an unreasonable delay does not in itself render the decision taken at the end of the internal procedure in question unlawful (see, for example, Judgments 4666, consideration 11, 4664, consideration 9, and 4584, consideration 4). These judgments, which form part of a series of consistent case law of the Tribunal on this subject, also reiterate that the right of a staff member to redress for injury caused by an unreasonable delay must take into account two considerations, namely the length of the delay and the effect of the delay on the staff member concerned.

In the circumstances, while the Tribunal is satisfied, as stated above, that the time taken to examine the complainant's internal appeal was in the case objectively unreasonable, it must be noted that the complainant has not indicated how that delay could have caused any particular injury, which he assesses at 3,000 euros, in a context where, regardless of how long it took to deal with his internal appeal, the fact remained that the conditions for the application of Staff Rule 111.4 were not, in any event, met. Since the Tribunal considers that the delay could not therefore have had a determining significant impact which would in itself justify the grant of compensation, the complainant's claim in this regard must be rejected.

18. As a result of all the foregoing considerations, all three complaints must be dismissed in their entirety.

19. In its written submissions, the ICC asks the Tribunal to order the complainant to pay his legal costs, the "costs of the proceedings", and "all expenses incurred for the case" in each of the matters, on the grounds that the complaints are, in its view, abusive. Subsidiarily, it asks that, even if the Tribunal does not make such an order, it should declare the complaints abusive.

The Tribunal finds these requests astonishing and wholly unjustified in the circumstances of the present cases. It is clear from the consistent case law of the Tribunal that a costs order will only be made against a complainant in exceptional cases, in which this could penalise the filing or maintenance of a complaint as being vexatious or abusive (see, for example, Judgments 4487, consideration 17, 4143, consideration 7, 3679, consideration 20, and 3506, consideration 4). It is essential that international civil servants' access to an independent and impartial judicial body is not impeded by the prospect of a potential costs order, other than in exceptional situations.

In the present case, it is obvious that requests of this kind are completely unfounded.

## DECISION

For the above reasons,

The complaints are dismissed, as are the organisation's claims for the award of costs.

In witness of this judgment, adopted on 31 October 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER