Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

110th Session **Judgment No. 2992**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms H. A. D. M. against the Centre for the Development of Enterprise (CDE) on 10 March 2009, the Centre's reply of 10 June, the complainant's rejoinder of 9 July, the CDE's surrejoinder of 19 October 2009, the complainant's further submissions of 15 September 2010 and the Centre's final observations thereon of 15 October 2010;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Belgian national born in 1946, entered the service of the Centre for the Development of Industry, the CDE's predecessor, on 1 April 1981. Throughout her career she was employed on the basis of contracts for a fixed period of time.

In her assessment report for 2005, which was drawn up on 21 September 2006, she obtained an overall score of 62.8 per cent, corresponding to a rating of 4, which meant that she "[s]atisfied fairly requirements corresponding to occupied employment", but that "certain areas [were] to be improved". She contested this score in her comments on the report. On 14 November the Director of the CDE signed this report and observed inter alia that the complainant was a "conscientious staff member" but that she had "difficulty in adjusting to the Centre's new requirements". On 20 December 2006 he offered her a contract for a fixed period of time from 1 March 2007 to 29 February 2008. He advised her that, if her efforts and future evaluations provided sufficient justification, she might receive a contract for an indefinite period of time, and he encouraged her "to take this period of time in order to make the substantial efforts necessary for having an assurance in [her] continued career within the CDE". The complainant accepted this contract.

In February 2007 the complainant was transferred to a different post. In July 2007, after having received her assessment report for 2006 in which she was given an overall score of 62.3 per cent, again corresponding to a rating of 4, she also challenged that score. When he signed this report the Director of the Centre observed that the complainant was "overwhelmed by the CDE's current requirements" and that "[h]er conscientiousness and willingness d[id] not make up for her operational shortcomings".

On 31 January 2008 the complainant asked the ad interim Director of the Centre what decision had been taken on the renewal of her contract. He replied to her by a memorandum of 6 February 2008 that, "[a]s the Head of [the] Administration [Department had] explained to her at [the] meeting [on] 21 December 2007", the Executive Board was making the decision on a renewal of her contract conditional on the "outcome of [her] assessment report for 2007" and that, if this showed "an overall score of 65% or more", her contract would be renewed for an indefinite period of time. The complainant informed the ad interim Director in a letter of 11 February 2008 that, while

she had indeed met the Head of the Administration Department on 21 December 2007, it had not been a formal meeting and that she had learnt of the "details regarding an overall score of 65% or any other score" only through the memorandum of 6 February 2008.

As she was given an overall score of 62 per cent in her 2007 assessment report, the complainant refused to sign this document. During an interview with the ad interim Director on 25 February 2008 she asked him to review that score, and the following day she forwarded her comments to the head of her department. On 27 February the ad interim Director approved the assessment report. In addition he informed the complainant of the decision not to renew her contract on the grounds of unsatisfactory performance and to give her nine months' salary in lieu of notice. On 21 April the complainant lodged an internal complaint under Article 66, paragraph 2, of the Staff Regulations of the CDE, which was dismissed by a letter of 24 June. She then initiated conciliation proceedings pursuant to Article 67, paragraph 1, of the Staff Regulations of the CDE and its Annex IV, but they failed. In his report of 8 December 2008, which constitutes the impugned decision, the conciliator considered that "after a significant period of unsatisfactory performance, as recorded in the 2005, 2006 and 2007 assessment reports", the non-renewal of her contract was justified.

B. The complainant submits, firstly, that her assessment report for 2007 must be set aside and she puts forward four arguments in support of this. Citing point 2.1 of Internal Rule No. R3/CA/05, entitled "Periodic assessment", which stipulates that "[s]upervisors shall be responsible for establishing, in consultation with each staff member, a work plan and objectives", she contends that, when she took up her new duties in February 2007, her supervisor did not discuss the objectives which had been set for her. In addition, she alleges that the Administration amended the assessment criteria during the year, that it submitted the new assessment form to the Staff Committee after the assessment exercise had been completed and that it allowed the Committee only three days to give its opinion.

While the complainant acknowledges that she had an opportunity to put her case to the ad interim Director, she states that the comments she sent to the head of her department on 26 February 2008 were unlikely to have any bearing on the score she was to be given because, in her opinion, the decision not to renew her contract had already been taken. From this she infers that her right to be heard has been infringed.

She also draws attention to the fact that, although her assessment reports for 2005 and 2006 identified alleged weaknesses, she was not offered any training, in breach of the above-mentioned internal rule.

Lastly, she considers that her assessment report for 2007 contained obvious misappraisals of facts and that the CDE's reasoning is wrong and inconsistent.

Secondly, the complainant challenges the decision not to renew her contract and she again puts forward four supporting arguments. She submits that the reasons for this decision are inadequate, because it is based on an assessment report which must be set aside.

She also argues that in deciding not to renew her contract, the ad interim Director committed an abuse of authority.

She further alleges a misuse of procedure by the CDE. She maintains that she was "deliberately underrated" in 2005, 2006 and 2007, so that the management would have grounds for dismissing her in due course. In her view, her performance assessments for those three years were clearly "rigged". In support of this allegation she produces three e-mails of 11, 17 and 19 July 2006. She points out that it was only after the new Director of the CDE took office in 2005 that her performance "strangely" began to decline, whereas in the previous 24 years she had received satisfactory or even excellent assessments. She considers that she is "one of the collateral victims of a covert restructuring". She says that, since 2006, budgetary pressures have resulted in a "real drive to downsize", and that the CDE's lawyer explained in a letter of 29 November 2007 to the Head of the Administration Department that there were two ways of cutting staff: non-renewal of contracts on the grounds of unsatisfactory

performance or redundancy, the second solution being the most expensive. She infers from this that the CDE chose the cheaper way of parting with her and that the assessment procedure was misused to justify the non-renewal of her contract.

Lastly, the complainant holds that the Centre breached both its duty to act in good faith and the principle of sound administration and that it neglected the duty of care which it owed her. In her opinion, she should have been advised of the decision to make the renewal of her contract conditional on her obtaining at least a certain score before the 2007 assessment exercise began. However, she was informed of it only by the memorandum of 6 February 2008, and even if she had been warned of this decision orally on 21 December 2007, she would in any case have been unable at that juncture, just ten days before the end of the exercise, to have reversed the course of events. She emphasises that she was not officially notified of the decision not to renew her contract until 28 February 2008, although her contract expired the following day, and she says that the reason given, i.e. unsatisfactory performance, was "fabricated". She submits that her dignity has been undermined because, four years before reaching retirement age, she was dismissed with immediate effect, even though she had served the Centre loyally for almost 27 years.

The complainant asks the Tribunal to set aside the conciliator's report of 8 December 2008, her assessment report for 2007, the decision not to renew her contract and, as appropriate, the decision dismissing her internal complaint. Consequently, she seeks reinstatement in her former post, or in an equivalent post, as well as the reconstitution of her career. Failing this, she asks for the payment with interest of the salary which she would have received had she worked until retirement age, "with annual increments indexed to the cost of living", and she claims 132,000 euros to make up for the "reduction in the return which her pension fund would have generated until retirement age", from which the amount of the compensation she has already received should be deducted. Subsidiarily, she claims the payment with interest of the compensation for which provision is made in Article 34, paragraph 6, of the Staff Regulations of the CDE, in the amount of 86,676.48 euros. At all events she claims the payment with interest of her repatriation

expenses and those of her family, a reinstallation allowance in the amount of 14,446.08 euros and 50,000 euros for moral injury. Lastly, she requests an award of costs.

C. In reply to the complainant's first plea, the Centre submits that she knew what objectives she had to achieve, because the recommendations contained in parts IV and V of her 2007 assessment report constituted objectives insofar as they indicated numerous areas where improvement was necessary. It explains that the assessment criteria were amended following the entry into force of the Staff Regulations of the CDE in 2005 and that, for the most part, they remained unchanged in 2006 and 2007. It states that consultation of the Staff Committee regarding the assessment form was merely optional, but that in this instance the Staff Committee did in fact take part in discussions regarding the amendment of the above-mentioned criteria.

The CDE rejects the complainant's allegation that her right to be heard has been infringed and points out that, when her assessment report for 2007 was drawn up, she was interviewed by her head of department and by the ad interim Director. She also had the opportunity to submit written comments, and in an e-mail of 27 February 2008 the ad interim Director confirmed that he had taken detailed note of them. The contents of her assessment report were not altered because, despite her explanations, the ad interim Director, in the exercise of his wide discretionary authority, considered that there was no reason to modify her score.

The Centre further notes that the complainant never requested any training, nor was it obliged to offer her any.

Lastly, it draws attention to the fact that, according to the case law, the Tribunal exercises only a limited power of review over performance appraisals.

With regard to the complainant's second plea, the defendant contends that it was right not to renew the complainant's contract, since she had obtained a score of less than 65 per cent for three years running.

It also submits that the ad interim Director was fully authorised to decide not to renew a contract.

The CDE further challenges the receivability of some of the annexes produced by the complainant, namely the e-mails of 11, 17 and 19 July 2006 and the letter of 29 November 2007, on the grounds that they are confidential documents which the complainant obtained unlawfully, and it asks for their removal from the file. It says that the assessment system was revised in 2005 to make it more objective. Staff members therefore had to adjust their level of performance to the new requirements, but the complainant "could not or would not" do so. Citing the Tribunal's case law, the Centre states that an assessment report is not tainted with an error of law solely because reports for earlier years were more favourable, and in this connection it points out that the complainant's assessment reports for 2005 and 2006 have become final. The complainant's allegation that she is the victim of a covert restructuring is pure speculation. The Centre comments that the approach which consisted in offering the complainant the opportunity to improve was much more expensive than making her redundant owing to restructuring.

According to the defendant, the Head of the Administration Department informed the complainant that the renewal of her contract was conditional on her obtaining at least a certain score on 21 December 2007. Furthermore, when in December 2006 the Director offered her a contract for one year and invited her "to make the substantial efforts necessary for having an assurance in [her] continued career within the CDE", he had very clearly warned her that she had to obtain a better score than her previous one, otherwise her contract would not be renewed. Age and seniority do not exempt a staff member from the need to give satisfactory performance.

Citing Judgment 2034, according to which "reinstatement is inadvisable when an employer has valid reasons for losing confidence in an employee", the Centre states that, since the complainant unlawfully obtained correspondence intended for her supervisors, it has completely lost confidence in her and could not contemplate her reinstatement. Under Article 6 of the Staff Regulations of the CDE, the

granting of a contract for an indefinite period of time is subject inter alia to "continuing satisfactory performance". For three years the complainant's performance remained only fairly satisfactory, and in fact it even tended to decline. In these circumstances the claims seeking payment of the salary which the complainant would have received had she worked until retirement age and of 132,000 euros to make up for the "reduction in the return which her pension fund would have generated" are unfounded. The defendant explains that the claim for compensation under Article 34, paragraph 6, is likewise devoid of merit, because this paragraph concerns redundancies. It adds that the reinstallation allowance and the defrayal of repatriation expenses "do not form part of this dispute", but that the complainant is entitled to them provided that she meets the conditions established in the pertinent rules. The CDE considers that it has treated the complainant with due care and has demonstrated patience with her and that she therefore has no grounds for claiming redress for any moral injury. It requests that she be ordered to pay costs.

D. In her rejoinder the complainant presses her pleas. She says that she has difficulty in understanding how recommendations formulated on 19 February 2008 in her assessment report for 2007 could constitute objectives for 2007.

In addition, she asks the Tribunal to disregard the letter of 29 November 2007. Relying on Judgment 1177, she considers, however, that the e-mails of 11, 17 and 19 July 2006, which were sent to her anonymously and whose content and veracity are not contested by the Centre, are an integral part of the process resulting in the decision not to renew her contract and should not therefore be withheld from the Tribunal's scrutiny. Citing Judgment 2315, she draws attention to the fact that where a claim for confidentiality is made, it is for the party making that claim to establish the grounds upon which the claim is based.

E. In its surrejoinder the CDE maintains its position. It takes note of the withdrawal of the letter of 29 November 2007 but points out that, since the e-mails of July 2006 contain the initials of several staff

members who can be easily identified by a cross-check with the organisation chart published on its website, the confidentiality of these staff members' personal data is at issue.

F. In her further submissions the complainant endeavours to show inter alia that the assessment criteria were substantially altered in 2007.

G. In its final observations the CDE says that the assessment form for 2007 was not "fundamentally different" in content from that used in 2006.

CONSIDERATIONS

1. The complainant entered the Centre's service on 1 April 1981. She was employed under a contract for a fixed period of time, which was regularly renewed. On 23 February 2005 her appointment was extended for two years until 28 February 2007. On 9 January 2007 she accepted the renewal of her contract for one year from 1 March 2007 to 29 February 2008. When offering her this renewal the Director of the CDE advised the complainant that, "[i]f [her] efforts and [her] future evaluations provide[d] sufficient justification", she might receive a contract for an indefinite period of time. He encouraged her "to take this period of time in order to make the substantial efforts necessary" for assuring her continued career within the organisation.

2. Article 30 of the Staff Regulations of the CDE provides that "[e]very 12 months, at the end of the calendar year and subject to the internal implementing rules laid down by the Director, the ability,

efficiency and conduct of a staff member shall be the subject of an assessment report by his superiors".

3. In her assessment reports for 2005 and 2006 the complainant obtained overall scores of 62.8 and 62.3 per cent respectively, which meant that she "[s]atisfied fairly requirements corresponding to occupied employment" and that "certain areas [were] to be improved".

4. In the assessment report for 2006, which was finalised on 24 July 2007, the Director observed that the complainant "was overwhelmed by the CDE's current requirements" and that "[h]er conscientiousness and willingness d[id] not make up for her operational shortcomings".

The complainant acknowledged receipt of the report on 18 October 2007, but expressed regret that the Administration had ignored her observations and comments as it had done, in her opinion, in relation to her assessment report for 2005. She did not, however, lodge a complaint against either the report for 2006 or that for 2005.

5. On 31 January 2008 the complainant asked the ad interim Director of the CDE to let her know whether her contract, ending on 29 February 2008, would be renewed. On 6 February he replied that "the Executive Board […], at its last meeting, [had] made the decision to renew [her] contract […] conditional on the outcome of [her] assessment report for 2007" and that "[i]f this show[ed] an overall score of 65% or more, it [had] authorised the Director of the CDE to renew [her] contract for an indefinite period of time".

6. The assessment process for 2007 culminated in the drawing up of a report in which the complainant received the overall score of 62 per cent. She refused to sign this report and requested a review of her score in the light of the comments she had made on her assessment on 25 February 2008.

However, on 27 February 2008 the ad interim Director confirmed the conclusions of the report for 2007 and also notified the complainant

that he had decided not to renew her contract owing to her unsatisfactory performance.

On 21 April the complainant lodged an internal complaint against this decision, which was rejected by a letter of 24 June 2008.

7. On 18 July 2008 the complainant requested the initiation of the conciliation procedure for which provision is made in Article 67, paragraph 1, of the Staff Regulations of the CDE and in Annex IV thereto; in particular, she sought the setting aside of the decision of 27 February 2008 and the withdrawal of her assessment reports for 2005, 2006 and 2007.

The appointed conciliator submitted his report on 8 December 2008. He concluded that his examination of the case "[had] not enabled him, on the one hand, to endorse [the complainant's] conclusions" and, on the other, "[had] led him to rule out the possibility of proposing any form of settlement to the parties", and that "there [was] no scope for a conciliation solution in respect of what [he had] come to regard as an understandable and justifiable decision in this case".

8. The complainant then filed a complaint with the Tribunal, asking it principally to set aside the conciliator's report of 8 December 2008, her assessment report for 2007, the ad interim Director's decision of 27 February 2008 not to renew her contract and, as appropriate, the decision of 24 June 2008 dismissing her internal complaint.

9. In support of her complaint she enters two pleas concerning, respectively, her assessment report for 2007 and the decision not to renew her contract.

10. The CDE, which argues that the complaint should be dismissed as unfounded, requests that certain documents be removed from the file on the grounds that they are confidential and that the complainant obtained them unlawfully. The complainant agrees to the

removal of one of the documents in question, but she states in respect of the others that there can be no objection to her having produced in her defence documents which were forwarded to her spontaneously and anonymously after she had already left the organisation.

The Tribunal will not accede to the request for the removal of items of evidence, since the Centre has not proved that this request is justified by the protection of interests more worthy of protection that the complainant's interest in defending herself (see Judgment 2700, under 7).

The assessment report for 2007

11. The complainant first taxes the CDE with not having set the objectives for her in advance, with having altered the assessment criteria during the year, with having sent the assessment form to the Staff Committee after the assessment exercise had been completed and with having allowed this Committee only three days to give its opinion.

12. The Tribunal notes from the submissions that, under Rule of Procedure 8.1.2 of the CDE Staff Association, "[t]he Directorate may […] refer to the Staff Committee any question of a general nature affecting the interests of the staff or arising out of the Staff Regulations and CDE Statutes", and that "the […] Committee shall state its opinion on a matter within 30 days of notice thereof, except that by mutual agreement a shorter or a longer period may be decided upon in exceptional cases".

Alteration of the form used to assess the performance of staff members plainly falls into the category of questions which may be referred to the Staff Committee for an opinion.

13. The evidence shows that the organisation's management did not submit the draft of the new assessment form to the Staff Committee until 28 January 2008 and that it gave the Committee a

time frame of only three days to provide its opinion. Thus, the procedure for adopting the new assessment form was still under way on 28 January 2008, whereas the 2007 assessment process had already been completed. This circumstance, which is not disputed, manifestly constituted a breach of the rules.

14. In addition, the Tribunal considers that, even if, as the defendant points out, consultation of the Staff Committee was optional, the principles of good faith and of the stability of the parties' legal relations as well as the rules of sound administration required the organisation's management, once it had decided to go ahead with this consultation, to abide by all the provisions of the text governing it, in particular by allowing the Staff Committee 30 days in which to give its opinion. Irrespective of the extent of the changes made to the assessment form, and despite the fact that discussions concerning the assessment procedure had already started in January, the Centre was not exempt from compliance with this requirement.

By allowing the Staff Committee a time frame of only three days in which to issue its opinion, which was shorter than the period provided for in the applicable text, the Centre breached the rules in force, as there is no evidence that this time frame was set by mutual agreement.

15. It follows that the assessment for 2007, which was conducted on the basis of an assessment form adopted after the 2007 assessment exercise had been completed and hence under unlawful conditions, is flawed and must therefore be set aside.

Non-renewal of the contract

16. The complainant submits that the decision not to renew her contract is unlawful in that it rested on the score of less than 65 per cent that she obtained in the assessments for 2005, 2006 and 2007, whereas the assessment report for 2007 must be declared null and void.

17. According to firm precedent, a decision not to renew a contract, being discretionary, may be set aside only if it is tainted by flaws such as lack of authority, breach of formal or procedural rules, mistake of fact or of law, disregard of essential facts, misuse of authority or the drawing of mistaken conclusions from the evidence. It is therefore necessary to examine whether the decision not to renew the complainant's contract is tainted by a flaw which would entail its setting aside.

18. This decision is based on the complainant's allegedly unsatisfactory performance as evidenced by her assessment reports for the years 2005 to 2007.

However, the Tribunal has decided, for the reasons stated under 13 and 14 above, to set aside the assessment for 2007. This assessment must therefore be deemed never to have been conducted. Hence the fundamental obligation to examine a staff member's assessment report before taking any decision not to renew that person's contract was not complied with and, according to the case law, this constitutes a procedural flaw the effect of which is that an essential fact is overlooked (see Judgment 2096 and the case law cited therein).

It follows that the decision not to renew the complainant's contract must be set aside, as must that dismissing her internal complaint, without there being any need to rule on the other pleas entered to that end.

The injury suffered

19. The complainant considers that she has suffered both material and moral injury. She states that if her assessment reports, especially that for 2007, had not been "rigged", she would have been awarded a contract for an indefinite period of time. She therefore asks to be reinstated in her former post, or in an equivalent post, on the basis of a contract for an indefinite period of time, and to have her career reconstituted.

If reinstatement proves to be impossible, she principally claims the payment of compensation equivalent to the salary which she would have received had she worked until retirement age and the sum of 132,000 euros to make up for the "reduction in the return which her pension fund would have generated".

20. Under Article 6, paragraph 2, of the Staff Regulations of the CDE adopted on 27 July 2005, the duration of a contract for a fixed period of time "shall be up to two years, renewable twice only, up to a maximum overall period of five years", while the award of a contract for an indefinite period of time is subject to "continuing satisfactory performance" among other things.

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

Nothing in the submissions indicates that the complainant satisfied the conditions for obtaining a contract for an indefinite period of time and that she would thus be entitled to be reinstated on the basis of such a contract, or to equivalent redress. Indeed, while the assessment report for 2007 may not be taken into consideration because it has been set aside on the grounds that it was unlawful, those for 2005 and 2006, which have become final as they have not formed the subject of any formal appeal, show that the complainant merely "[s]atisfied fairly requirements corresponding to occupied employment" and that "certain areas [were] to be improved".

21. Nevertheless, since the decision concerning her was unlawful, the complainant has suffered material and moral injury which must be redressed bearing in mind the circumstances of the case.

22. As far as material injury is concerned, it should be noted that the complainant's contract had been renewed for a two-year period

ending on 28 February 2007, before the entry into force of the Staff Regulations of the CDE which limit the duration of a contract for a fixed period of time to two years, renewable twice only, up to a maximum overall period of five years. Since the complainant's contract had been renewed once for one year – from 1 March 2007 to 29 February 2008 – it could therefore be renewed a second time for no more than two years.

The Tribunal therefore deems it fair to grant the complainant compensation, inclusive of interest, equivalent to the salary and allowances she would have received had her contract been renewed for a one-year period as from 1 March 2008.

23. The complainant, who had worked for the CDE continuously since 1981, was notified on 27 February 2008, i.e. only two days before the expiry of her last contract on 29 February 2008, that her contract would not be renewed for reasons which the submissions show to be incorrect.

In view of the circumstances of the case, this late notification caused the complainant moral injury which must be redressed by awarding her compensation in the amount of 5,000 euros.

24. The complainant is not entitled to any other redress for material or moral injury, because none of the other pleas entered in support of such redress is founded. The submissions do not show that the CDE disregarded the complainant's right to be heard, that it breached the principle of good faith or that it misused any procedure.

25. The complainant's claim for the payment of 132,000 euros to make up for the "reduction in the return which her pension fund would have generated until retirement age" is unjustified because, as stated under 20 above, she had no right to be granted a contract for an indefinite period of time.

26. The Tribunal will not grant the claim for payment of the sum of 86,676.48 euros by way of the compensation referred to in Article 34, paragraph 6, of the Staff Regulations of the CDE, as the

complainant has not proved that her contract was not renewed on the ground of abolition of post.

27. In addition, the complainant requests a reinstallation allowance and the defrayal of her repatriation expenses and those of her family.

While the defendant states that these requests "do not form part of this dispute", it acknowledges that the complainant is entitled to the said allowance and the defrayal of her repatriation expenses, provided that she meets the conditions laid down in the relevant rules.

The Tribunal considers that the complainant is entitled to the reinstallation allowance and the defrayal of repatriation expenses if she satisfies the requisite conditions. She must therefore be paid the corresponding sums, if this has not been done already.

28. As she succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. The complainant's assessment report for 2007 is set aside.
2. The decision of 27 February 2008 not to renew the complainant's contract and, as appropriate, the decision of 24 June 2008 are set aside.
3. The CDE shall pay the complainant compensation, including all interest, equivalent to one year's salary and allowances to redress the material injury suffered.
4. It shall pay her compensation for the moral injury suffered in the amount of 5,000 euros.

5. It shall pay her the reinstallation allowance, if this has not already been done, and it shall defray her repatriation expenses as indicated under 27, above.

6. It shall also pay her 5,000 euros in costs.

7. All other claims are dismissed.

In witness of this judgment, adopted on 9 November 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Mary G. Gaudron
Seydou Ba
Patrick Frydman
Catherine Comtet