Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K.

v.

ILO

126th Session **Judgment No. 4039**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. K. against the International Labour Organization (ILO) on 19 October 2016, the ILO's reply of 15 December 2016, the complainant's rejoinder of 19 January 2017 and the ILO's surrejoinder of 24 February 2017;

Considering the documents produced by the ILO on 1 February 2018 at the Tribunal's request;

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, who alleges that he is the victim of institutional harassment and discrimination, seeks redress for the injury he considers he has suffered.

On 24 October 2012, the Office of Internal Audit and Oversight (IAO) was alerted by a whistleblower to an alleged breach of the provisions of Circular No. 666, Series 6, of 4 April 2007, entitled "Employment and other types of contracts with close relatives of ILO officials" by the complainant – an official assigned to the Financial Management Department of the International Labour Office, the secretariat of the ILO – on account of the fact that his spouse had been recruited on several occasions to work, inter alia, for the International

Labour Conference. On 16 December 2013, after conducting a preliminary evaluation of these allegations, the IAO, which had identified some *prima facie* evidence warranting the opening of an investigation, contacted the complainant to inform him that it would be necessary to interview him. The IAO referred to an "allegation" which had been brought to its attention, without providing any further details of its actual content, and asked the complainant to make himself available on 17 December 2013. During the interview, which took place on that date, the complainant had to answer several questions related to the recruitment of his spouse as well as a potential conflict of interest arising from the fact that he had himself signed some of his spouse's certificates of earnings. He stated that "everyone" knew that he was married to her.

On 12 August 2014 the complainant, who had enquired about the progress of the investigation, was contacted by the IAO with a view to holding a further interview to "clarify certain points related to additional information obtained on the matter". The complainant requested that another person be allowed to attend the interview with him, but his request was refused. The second interview took place on 1 September 2014. In addition to the issue of his spouse's recruitment, he was asked to clarify the substantial increase in the number of hours of overtime which he had worked during the International Labour Conference in 2013. He was informed by letter of 16 December 2014 that, in light of the findings of the IAO's investigation report, the conclusion had been reached that he had not committed any error warranting a disciplinary sanction.

Meanwhile, in November 2014 the complainant had filed a grievance with the Human Resources Development Department (HRD) challenging several aspects of the investigative process which, in his view, constituted harassment. He requested that his grievance be examined and that all the consequences should be drawn therefrom. Subsidiarily, he sought redress for the moral injury suffered. He produced a copy of a certificate drawn up by his doctor, recording a deterioration in his health. This grievance was dismissed in February 2015.

In March 2015 the complainant filed a grievance with the Joint Advisory Appeals Board (JAAB) in which he maintained most of the submissions made in the grievance he had submitted to HRD and asked

the JAAB to recommend to the Director-General that the moral injury suffered should be redressed. Under this head, he sought the payment of the equivalent of one year's salary, the "reinstatement" of his spouse in the Organization, the circulation of an information note setting out the findings of the investigation, the adoption of disciplinary sanctions against the whistleblowers for their fallacious, malicious allegations, the issuing of warnings to the IAO on account of its flawed proceedings and abuse of authority and a letter of apology from the Administration. The JAAB issued its report on 20 May 2016. It considered that the investigation opened against the complainant was abusive because it was unjustified, that responsibility for compliance with the applicable provisions lay with HRD and that the investigative process was tainted with a number of flaws constituting institutional harassment. As it considered that the grievance was well-founded, it recommended that the Director-General should send a letter of apology to the complainant and circulate an information note to persons who were aware of the investigation in order to dispel any suspicions they might have had with regard to the complainant, that it should be made clear to former and possible future employers of the complainant's spouse, through a communication from HRD, that there was nothing in the applicable rules to prevent her employment, to grant the complainant 50,000 Swiss francs in compensation for moral injury and, lastly, to take the requisite steps for the adoption of rules and procedures for investigations.

By a letter of 19 July 2016, which constitutes the impugned decision, the complainant was notified of the Director-General's decision not to accept the JAAB's recommendations and to dismiss his grievance as unfounded.

The complainant filed a complaint with the Tribunal on 19 October 2016 seeking the setting aside of the impugned decision, the payment of compensation under all heads equal to one year's salary and the implementation of the JAAB's recommendations.

The ILO submits that the complaint is irreceivable because the opening of the investigation was not an act adversely affecting the complainant and the Tribunal is not competent to order the measures

recommended in the report of 20 May 2016. It asks the Tribunal to dismiss the complaint as otherwise unfounded.

During its preliminary examination of the case, the Tribunal asked the ILO to produce several documents related to the IAO investigation. These documents were produced on 1 February 2018.

CONSIDERATIONS

1. The Tribunal first notes that the complainant requests an oral hearing. This request is rejected as the written pleadings and evidence which the parties have provided are sufficient to enable the Tribunal to reach an informed decision.

2. The complainant submits that he was subjected to institutional harassment resulting from the fact that he had to undergo an unjustified investigation, from several procedural flaws in the investigation, from unequal treatment, from the IAO's obduracy, from discrimination due to his marital status and from a breach of his right to be treated with respect and dignity.

In so doing, the complainant paraphrases the findings of the JAAB, which in its May 2016 report considered:

> "135. [...] that [the complainant] was subjected to an unwarranted investigation and that the investigation procedure followed was tainted with irregularities as regards compliance not only with the principle of equal treatment and respect for the dignity of the person under investigation, but also the intrinsic rules of a procedure consonant with the Organization's duty of care towards its officials.
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> 136. The Board considers that, *taken as a whole*, all these elements lead to the conclusion there was institutional harassment, irrespective of whether these actions, which were perceived by [the complainant] to be a violation of his fundamental rights and an affront to his dignity, were deliberate (Judgments 2524, under 25, 2370, under 17, and 3250, under 9). Continued mismanagement undermining an employee's dignity can constitute institutional harassment (Judgment 3250, under 10). The Board also considers that the Office's conduct (be it that of HRD, the IAO, or the investigator) was not of a reasonable

> nature that might have dispelled any hint of the harassment alleged by the [complainant].”*

3. The complainant submits that the opening of the investigation concerning him was abusive. The Organization objects to the receivability of this plea on the grounds that the opening of an investigation does not constitute an appealable injurious act.

As the Organization recalls, according to the Tribunal’s case law, a decision to open an investigation into misconduct is not a decision that affects the official’s status (see Judgments 3236, under 12, and 2364, under 3 and 4). The purpose of such an investigation, which may be compared – in terms of criminal justice – to the investigation that precedes possible criminal proceedings, is not to gather evidence which can be used against the person concerned, but to provide the competent authority with information enabling it to decide whether the opening of a disciplinary procedure is warranted. Since it does not affect the complainant’s legal situation or alter her or his status, the decision to open an investigation does not constitute an “administrative decision” which may be impugned before the Tribunal (see the aforementioned Judgment 2364, under 3 and 4).

However, as stated above, the complainant submits that this allegation, combined with others, is proof of harassment. The Tribunal must therefore ascertain whether the opening of the investigation is in itself sufficient to establish the existence of institutional harassment.

4. With regard to the plea that it was unlawful to initiate the investigation, it must be recalled that paragraph 30 of the Uniform Guidelines for Investigations (2nd Edition) endorsed by the 10th Conference of International Investigators held in June 2009 reads:

> “Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.”

* Registry’s translation.

In this case, the IAO consulted HRD which concluded that "[i]t appears that breaches to Circular [No. 666, Series 6] have occurred, but this preliminary review is insufficient to determine whether those breaches were intentional. Confronting the officials concerned would be a necessary step in determining possible responsibilities". Moreover, the preliminary review had revealed that, since 2005, the complainant's spouse had received 93 employment contracts with the Organization of a total value of more than 110,000 Swiss francs.

In its report, the JAAB meticulously considered whether the preliminary evaluation offered a "legitimate basis" for the further step of opening an investigation. It reached the conclusion that, with regard to breaches of Circular No. 666, the investigation ought primarily to have concerned the persons who had offered the irregular contracts and not the complainant. In the JAAB's opinion, the only issue concerning the complainant which should have been examined during the preliminary evaluation was whether he had revealed his close relationship with his spouse as required by paragraph 12 of the circular. The JAAB noted that during the preliminary evaluation HRD had stated that the complainant "started declaring income earned by his wife in his family [status] declaration for 2005. He attached confirmations of earnings issued by the ILO to [his spouse] to his family [status] declarations in respect of the years 2008-2011. No confirmations of earnings for his wife were provided for 2005, 2006 and 2007. It should be noted that confirmations of earnings for 2009 and 2011 issued to [the complainant's] spouse were signed by [the complainant] on behalf of the Chief of [the Payment Authorisation Section]." The JAAB noted that the complainant's personal file showed that he had declared his spouse's income for 2007 and that since 2008 he had declared her income every year until 2014. It added that it was clear from the personal file of the complainant's spouse that in March 1992 she had already informed the Office of her close relationship with the complainant in a document entitled "Personal History Form" under the appropriate heading. The JAAB inferred that the complainant had complied with his obligation to disclose his family relationship and that this aspect ought to have been verified at the preliminary evaluation stage, which would have obviated the need to open an investigation. It therefore considered that

the investigation opened into the complainant's conduct was abusive because it was unjustified.

The decision to open an investigation, which in no way prejudges the decision on merits of a possible sanction, lies at the discretion of the competent authority.

In the instant case, the whistleblower had reported that the complainant's spouse had been recruited more than once by the Office, that there had possibly been "subterfuge" because she had used different first names in the Integrated Resource Information System (IRIS) and the application listing ILO officials and that her private address was given as "c/o ILO" in IRIS. Having consulted HRD, which considered that it would be necessary to confront the officials concerned in order to determine responsibilities, and having ascertained that the complainant's spouse had in fact been given 93 contracts since 2005, including six for the International Labour Conference between 2007 and 2012, the IAO formed the opinion that it had identified sufficient *prima facie* evidence to open an investigation.

The Tribunal considers that the evidence available to the IAO at that stage justified looking into whether, apart from mentioning his family relationship in his annual family status reports, the complainant had also disclosed it to the persons whom he had contacted in order to obtain a contract for his spouse, and whether there was not a conflict of interest, given that many contracts addressed to his wife had been sent to his professional address, that he himself had signed a number of them and that he had signed his spouse's annual certificates of earnings on behalf of the Chief of the Central Payroll Unit of the Payment Authorisation Section. Indeed, the IAO report found that these allegations were substantiated in part.

The Tribunal therefore finds that, in opening the investigation, the Organization did not exceed the limits of its discretionary power in the matter.

This plea is unfounded.

5. The complainant contends that several flaws tainted the investigation, namely the lack of prior formal notification of the subject matter of the interviews with the investigators, the lack of representation and/or counsel, the failure to hold the interviews in the language of his choice, the fact that the allegations against him were altered during the proceedings, the inordinate length of the investigation and the lack of any mention in the investigation report of some interviews to which reference was made in the IAO's case opening form.

In principle, allegations concerning irregularities in an investigation must be brought in the context of a challenge to the final decision arising from the investigation proceedings (see, in this connection, Judgment 3236, under 11). However, in this case, there was no disciplinary decision, since the investigation showed that the allegations against the complainant were unfounded. Nevertheless, inasmuch as the complainant submits that these flaws themselves constitute proof of institutional harassment, the Tribunal must examine them, since the Tribunal's case law has established that the question as to whether harassment has occurred must be determined in the light of a thorough examination of all the objective circumstances surrounding the events complained of (see, for example, Judgment 3871, under 12).

6. The complainant contends that the investigative process was unlawful because he did not receive prior notification of the allegations forming the subject of the two interviews with the investigators. Referring to the report of the JAAB, he submits that he was thus deprived of the possibility of preparing himself in full knowledge of the facts. In his view, this constitutes a breach of paragraph 17 of the Uniform Guidelines for Investigations, which states that "[a]s part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf".

The Organization replies that at the beginning of his first interview with the investigators, the complainant was immediately informed of the precise allegations against him and he was given the opportunity to

explain his conduct at length and to provide any potentially exculpatory evidence.

The sole purpose of an investigation is to establish the existence of facts that may be contested during disciplinary proceedings in which the rights of defence must be scrupulously safeguarded. The Tribunal considers that it is "clear that the rules relating to due process, in particular, which must be respected scrupulously during the actual disciplinary proceedings [...] (see, for example, Judgment 2475), do not apply during the investigation of matters brought before an internal auditing body" (see Judgment 2589, under 7). The Tribunal holds that, while it is preferable to notify the person concerned that she or he is to be the subject of an investigation, except where this would be liable to compromise the outcome of the investigation, such notification is not a requisite element of due process (see Judgment 3295, under 8).

Once the investigation is opened, the organisation is under an obligation to provide the person concerned with an opportunity to explain her or his conduct and to present any information on her or his behalf. The Uniform Guidelines for Investigations do not, however, stipulate when the person concerned must be given this opportunity, since the aforementioned paragraph 17 of the Guidelines provides that this matter "is regulated by the rules, policies and procedures of the Organization". In the International Labour Office there is no internal manual or practical guide setting out the procedure to be followed when conducting such interviews. Like the JAAB, the Tribunal considers that the above-mentioned opportunity should preferably be afforded before rather than during the interview. However, in this case, there is nothing to indicate that the complainant was in any way prevented from defending himself on account of the manner in which the investigation was conducted (see, in this connection, Judgment 2771, under 18).

The plea is therefore unfounded.

7. The complainant takes the Organization to task for refusing to allow him to be accompanied during the interviews with the investigators.

The Uniform Guidelines for Investigations do not address the issue of whether the subject of an investigation can be accompanied during an interview with the investigators. The ILO infers from this that organisations enjoy some latitude in the matter, and it outlines the diverse practices of various other international organisations to support this view.

On this issue, the JAAB found that the practice of not allowing the persons concerned to be accompanied by an observer, which has been "called into question by the Joint Inspection Unit of the United Nations System, no longer seems to be consonant with a procedure respecting the principle of the rights of defence or, more broadly, the [Office's] duty of care".

The report of the Joint Inspection Unit cited by the JAAB states that "[s]taff indicated that they would like an observer or representative of their choosing to be present during interviews. Many investigators agreed with this, yet few internal oversight entities allow the presence of an observer." This passage confirms that, as the law stands at present, the presence of an observer or representative of the person being interviewed cannot be regarded as a standard practice to which the Organization should have adhered.

The possibility of being accompanied would certainly be preferable. However, the Tribunal has consistently held that no general principle obliges an international organisation to make provision for staff members under investigation to be assisted by a staff representative when they are interviewed (see Judgment 2589, under 7).

This plea is therefore unfounded.

8. The complainant takes issue with the fact that the investigators never asked him in what language he wished to be interviewed. During both interviews, the investigators questioned him in English. In his opinion, the absence of an interpreter constitutes a breach of his fundamental rights.

The ILO replies that the complainant raises this issue for the first time in the proceedings before the Tribunal. It explains that the purpose of the second investigator's presence was to translate what was said

from French into English and vice versa, if necessary. Lastly, it states that the complainant answered in fluent English during both interviews.

The Tribunal finds that during the interviews there was nothing to prevent the complainant requesting the presence of an interpreter. As he failed to do so, the plea must be deemed to be unfounded.

9. The complainant contends that the allegations against him were altered during the proceedings. The investigation was triggered by a denunciation of the circumstances surrounding his spouse's employment. Several months after the first interview, a second interview concerned a completely different subject, namely the substantial increase in the complainant's overtime during the 2013 International Labour Conference, which had formed the subject of rumours of which the investigator was informed during the investigation.

In its report the JAAB found that the alteration of the allegations against the complainant during the investigation constituted a procedural flaw and proof of an obdurate attitude towards him. In the JAAB's opinion, the investigator's manner of proceeding was contrary to any investigation procedure and therefore arbitrary, because there was no connection between the two allegations.

The ILO replies that in an inquiry into misconduct it is by no means abnormal that the investigations conducted by the IAO to corroborate an allegation of misconduct should lead it to look into other reports of misconduct by the suspect which have been brought to the IAO's attention in the course of the investigation.

It is true that new facts discovered during an investigation may sometimes corroborate the original allegation. In this case, however, the alleged inflation of the complainant's overtime during the 2013 International Labour Conference has nothing to do with the allegation relating to the circumstances in which his spouse was employed. The suggestion that the excessive amount of overtime that the complainant was accused of having claimed might have been explained by the financial loss resulting from the refusal to recruit his spouse for the Conference does not in itself establish an adequate link between the two allegations.

As this was a new allegation, the IAO should have acted in accordance with paragraphs 27 to 30 of the Uniform Guidelines for Investigations and should at least have determined whether there were legitimate grounds warranting a new investigation on that issue. There is nothing in the file to show – and the defendant organisation does not submit – that the IAO conducted a preliminary evaluation before investigating the new allegation.

This plea is therefore well founded.

10. The complainant contends that the investigation was inordinately long, especially in view of the simplicity of the allegations against him.

The chronology of proceedings is as follows:

– on 24 October 2012, the IAO received allegations from a whistleblower concerning the contracts of the complainant's spouse;
– on 9 November 2012, the IAO interviewed the whistleblower;
– on 28 February 2013, the head of the IAO approved its investigator's proposal to conduct a more thorough inquiry;
– on 16 December 2013, the complainant was summoned to a first interview with the investigators, which took place on 17 December 2013;
– at the beginning of 2014, the complainant asked the IAO when the investigation would end. He was told that it would be concluded by the end of February;
– on 28 July 2014, he again asked the IAO how long the investigation would last. The next day he was informed that it was still underway;
– on 12 August 2014, the complainant was summoned to a second interview which took place on 1 September 2014;
– on 14 November 2014, a minute sheet was forwarded by the head of the IAO to the Director-General, the Treasurer and Financial Comptroller and the Director of HRD. The investigation report was appended thereto;

– on 16 December 2014, the complainant was informed that, in light of the findings of the IAO investigation report, the conclusion had been drawn that he had not committed any error warranting a disciplinary sanction.

More than 21 months elapsed between the initiation of the investigation and the date on which the complainant was officially notified of the outcome. It is true that the complainant was not informed about the investigation until 16 December 2013 when he was summoned to a first interview. However, he then had to wait for a year before knowing the outcome.

The ILO submits that the length of the investigation was justified by the fact that it concerned two officials who were suspected of misconduct, that a large number of witnesses had to be interviewed and that the additional misconduct reported during the investigation called for additional inquiries to corroborate the allegations. In addition, the ILO contends that as the number, seriousness and complexity of allegations requiring investigation are completely unforeseeable, the IAO has to use its resources and deploy its investigators "flexibly".

The Tribunal finds that the issues were relatively simple. The fact that two officials were involved was no reason to prolong the investigation, since the allegations and the witnesses were the same. The fact that the investigation was extended owing to a new allegation must be disregarded, since the investigation wrongly covered that allegation, as explained in consideration 9, above. As for the Organization's need to husband its resources and take account of the number of investigators available, whom it had to deploy "flexibly", the Tribunal draws attention to the fact that the decision whether or not to initiate an investigation is taken at the Organization's discretion. However, once an investigation is opened, it must be conducted expeditiously without the suspect having to suffer the consequences of the investigators' possible lack of time. An international organisation has an obligation to initiate the investigation in a timely manner and the corollary obligation of ensuring that the internal body responsible for investigating and reporting on the allegations has the necessary resources to carry out that responsibility (see, in this connection, Judgment 3347, under 14).

In these circumstances the duration of the investigation – more than 21 months – is inordinate, as is the period of 12 months between the date on which the complainant was first interviewed and the date on which he was notified of the findings of the investigation.

This plea is well founded.

11. The complainant emphasises that, in its report, the JAAB noted that some interviews to which reference was made in the IAO's case opening form were not mentioned in the investigation report, a copy of which he received on 17 October 2016. The JAAB concluded that "as these [interviews] yielded information of decisive importance for the conclusions reached in the investigation, [it] considers that this amounted to manifest omissions of essential facts and constituted procedural flaws".

A flaw of this kind, based on the fact that an investigation report is incomplete, could, if proven, be relied upon in an appeal against a disciplinary decision; but given that in this case the investigation report was favourable to the complainant and that no disciplinary action was taken against him, the Tribunal fails to see how a possible lacuna in the report could be indicative of harassment.

12. The complainant alleges that he suffered discrimination because other colleagues who, according to him, were in the same situation, were not subjected to an investigation. In its report, the JAAB noted that three officials (including the complainant) were targeted in the whistleblower's allegations of 24 October 2012, and that on 20 February 2013 the same whistleblower had submitted allegations concerning seven other officials. The JAAB observed that the various documents forwarded to it by HRD provided no indication as to why the investigation concerned only two officials, one of whom was the complainant. It concluded that the IAO should have proceeded fairly by investigating all the reported cases.

The Organization denies any breach of the principle of equal treatment and states that, in addition to the complainant and his colleague, Mr G., nine other officials named by the whistleblower

formed the subject of a preliminary evaluation by the IAO which revealed no misconduct on their part, hence there was no reason to open an investigation with regard to them.

The Tribunal examined *in camera* the IAO case opening form and the final report on the allegations concerning the employment of close relations of ILO officials. These documents show that the IAO did carry out a preliminary evaluation of nine other officials' cases and, in the exercise of its discretionary power (see consideration 4, above), determined on the basis of the evidence in each individual case that there was no need for any further investigation of these officials. In light of the evidence produced by the Organization, the Tribunal considers that in so doing the IAO did not commit an error of judgement.

Moreover, since the opening of the investigation into the complainant's conduct was warranted, the fact that the investigation of other colleagues was not pursued, even if they were in the same situation, cannot be considered to be indicative of harassment in this case.

The plea therefore fails.

13. The complainant considers that he has been the victim of obduracy on the part of the IAO, and in this connection he draws attention to three findings of the JAAB.

First, he submits that some questions posed during the interviews by the investigators were intimidating and inquisitorial. For example, he says that the investigator asked him from whom he had requested an opinion on the compliance of his spouse's contracts with Circular No. 666. The complainant replied that he had asked someone in HRD, but that he no longer remembered the name of that person. The investigator than insisted on knowing her or his name and concluded that the complainant was refusing to supply that information. In the complainant's opinion, other questions concerning his private life were humiliating and degrading, such as whether the reason why his wife worked for the International Labour Conference was that he was in financial difficulties. While it is true that insistence on obtaining a reply to a specific question and questioning his financial situation might seem to be inappropriate, the Tribunal finds that these were merely a few

questions amongst many other ones which, taken as a whole, cannot be termed intimidating or humiliating.

As further evidence of the alleged obduracy, the complainant points to the fact that the investigator questioned him in connection with new allegations brought during the investigation about misconduct in relation to his overtime, when these were mere rumours. In this respect, reference is made to consideration 9, above.

Lastly, he alleges that during a chance meeting between his colleague, Mr G., and the investigator at a rugby match in London, she said that there had been a wish to make "an example" of them. In this respect, the file contains a declaration by the investigator in which she acknowledges that she met the complainant's colleague at the match, but formally denies making the statement that this colleague attributes to her. As there is no evidence to support the complainant's allegation, the Tribunal cannot accept it.

14. The complainant considers that Circular No. 666 is discriminatory and that its interpretation and application have resulted in his spouse no longer being recruited by the ILO. In its report, the JAAB found that the circular is not discriminatory in itself but that some discrimination may arise from its application. Indeed, a distinction must be drawn between, on the one hand, the recruitment of a close relative to work for the International Labour Conference under so-called "conference contracts", which may be offered only once, and, on the other hand, short-term contracts, special short-term contracts and external collaboration contracts, which may be concluded on several occasions subject to justification by the relevant manager and the written authorisation of the higher level chief.

The submissions in the file show that the complainant's spouse has not been taken on since 2012. However, the complainant has not established that his spouse was no longer recruited on account of confusion between "conference contracts" and other contracts permitted by the circular.

15. As the JAAB rightly noted in its report, the Uniform Guidelines for Investigations constitute a framework which does not exempt the Organization from adopting its own rules, policies and procedures. The ILO has failed to do so. Moreover, it has not set any rules for the application of Circular No. 666. Had there been clear rules on the subject, this dispute could probably have been avoided.

16. Be that as it may, the Tribunal must determine whether all the elements examined above amount to institutional harassment.

The JAAB and the complainant share the view that, "taken as a whole", the elements in question lead to the conclusion that there was institutional harassment. It is correct to say that a long series of acts and omissions evidencing mismanagement which have compromised a complainant's dignity and career prospects may constitute institutional harassment (see Judgments 3315, under 22, and 3250, under 9), but this was not the case here. As explained above, most of the matters on which the complainant relies cannot be accepted. There was a reasonable explanation for these elements and thus they cannot be said to constitute harassment (see Judgments 3447, under 9, and 2524, under 25). Only two procedural flaws have been established, one of which is partly the consequence of the other: first, the flaw resulting from the extension of the investigation to cover a new allegation differing from that on which it was initiated and, secondly, the inordinate length of the investigation which was partly the result of that.

The Tribunal will examine the ILO's definition of harassment in order to determine whether these two flaws amount to an act of harassment (see Judgment 2594, under 18).

At the material time, the only definition of harassment in the Staff Regulations of the International Labour Office referred to sexual harassment. However Article 2.9 of the Collective Agreement on the Prevention and Resolution of Harassment-related Grievances concluded between the International Labour Office and the Staff Union, which used to apply, and Article 13.4 of the current Staff Regulations provide sufficient insight into what the Organization regards as harassment (see Judgment 3071, under 43). The former defines it as "any act, conduct

or statement or request which is unwelcome [...] and could, in all the circumstances, reasonably be regarded as harassing behaviour of a discriminatory, offensive, humiliating, intimidating or violent nature or an intrusion of privacy". The latter defines it as "any form of treatment or behaviour by an individual or group of individuals in the workplace or in connection with work, which in the perception of the recipient can reasonably be seen as creating an intimidating, hostile or abusive working environment or is used as the basis for a decision which affects that person's employment or professional situation", and goes on to explain that determining whether or not certain behaviour constitutes harassment has both subjective and objective elements including the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is linked to real or perceived grounds such as race, ethnicity, social origin, national extraction, nationality, gender, family status, family responsibilities, age, sexual orientation, gender identity, political opinion, religion, disability, HIV status or trade union affiliation.

In this case, it must be recalled that an investigation is not disciplinary in nature, but that its sole purpose is to ascertain all relevant facts in order to determine whether there is sufficient evidence to initiate a disciplinary procedure (see Judgments 2771, under 15, and 2364, under 3). In accordance with paragraph 19 of the Uniform Guidelines for Investigations, both inculpatory and exculpatory information must be examined. The investigation clarified matters with the result that the complainant was not charged with any wrongdoing. He was cleared of any suspicion and his career has not been hampered. This shows that, at all events, the Organization had no wish to harm or harass him. An investigation that has been opened lawfully cannot be termed harassment. Admittedly, the unlawful extension of the investigation, which had already been inadmissibly delayed, made it unduly long. However, it is well settled that an unlawful decision or unsatisfactory conduct is not sufficient in itself to constitute harassment (see Judgments 3233, under 6, and 2861, under 37). In this case, the extension of the investigation prompted by new allegations and its inordinate length cannot reasonably be regarded as "harassing behaviour of a discriminatory, offensive, humiliating, intimidating or violent nature or

an intrusion of privacy" (Article 2.9 of the former Collective Agreement), or as "creating an intimidating, hostile or abusive working environment", or as the "basis for a decision" affecting [the complainant's] "employment or professional situation" (Article 13.4 of the current Staff Regulations). These two flaws do not therefore constitute harassment.

They do, however, warrant redress. With regard to the length of the investigation in particular, the Tribunal pointed out in Judgment 3295, under 7, that an organisation must investigate allegations of misconduct in a timely manner both in the interests of the person being investigated and the organisation. These interests include, among other things, safeguarding the reputations of both parties and ensuring that evidence is not lost. Consequently it must be found that the delay in conducting the investigation caused the complainant moral injury which must be redressed (see, in this connection, Judgment 3064, under 11).

17. The complainant asks the Tribunal to set aside the impugned decision of the Director-General. In addition to claiming damages equal to one year's salary, he asks the Tribunal to request the Director-General to implement the recommendations of the JAAB, in other words:

(a) to send him a letter of apology;

(b) to circulate an information note to persons aware of the investigation so as to dispel any suspicion;

(c) to make it clear to former and possible future employers of the complainant's spouse, through a communication from HRD, that there is nothing in the applicable rules to prevent her recruitment, in order that she does not suffer any discrimination or stigmatisation; and

(d) to take the requisite steps for the adoption of investigation rules and procedures applicable at the International Labour Office.

As far as damages are concerned, the Tribunal considers it fair to order the Organization to pay 20,000 Swiss francs in compensation for the injury suffered on account of the procedural flaw identified under

consideration 9, above, and the inordinate length of the investigation noted under consideration 10.

The claims related to the other recommendations of the JAAB, which the complainant asks the Tribunal to order the Director-General to implement, cannot be allowed, as the Tribunal is not empowered to order apologies (see Judgments 3966, under 5, 3791, under 7, 3597, under 10, and 2417, under 28).

As a general rule, it is not within the Tribunal's competence to issue injunctions against organisations (see Judgments 3835, under 6, and 3506, under 18).

Accordingly, the Tribunal will set aside the Director-General's final decision of 19 July 2016 only insofar as it does not award financial compensation to the complainant.

DECISION

For the above reasons,

1. The decision of the Director-General of 19 July 2016 is set aside insofar as it does not award damages to the complainant.
2. The ILO shall pay the complainant 20,000 Swiss francs in moral damages.
3. All other claims are dismissed.

In witness of this judgment, adopted on 25 April 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ