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Disciplinary Procedure

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An international organization may expect from its staff the highest standard of integrity. Staff Regulations and Staff Rules of international organizations do therefore comprise provisions that require from its staff to regulate their conduct with the interests of the organization only in view, a principle to which the staff traditionally subscribes by oath in a declaration mostly identical in each international organization (the so-called ‘oath of loyalty’).<sup>1</sup> This principle is nowadays completed by the new *Standards of Conduct for the international civil service* devised by the International Civil Service Commission (ICSC) in 2001/2002, which replaced the former Standards of 1954.

Beside the explicit obligation to be loyal to the organization – the impartiality as cornerstone of the independence of international organizations – the staff has to abide to existing rules and regulations within his Organization but also respect the abstract principle of integrity, which embraces all aspects of behaviour of an international civil servant, including such qualities as honesty, truthfulness, incorruptibility, tolerance, respect for diversity and gender equality or mutual respect (which comprises also the relation between management and staff) etc.

Concretely, this means *inter alia* that staff members have to follow local laws, cannot accept instructions from an external source or any gifts, honours or remuneration without authorization, engage in any form of harassment within the organization or in conflict of interest, disclose any confidential information about the Organization or colleagues, disobey instructions from supervisors or commit funds without proper authorization.

In case of misconduct, a staff member (or a temporary employee) might face disciplinary proceedings. The internal disciplinary mechanisms usually foresee official mandatory reporting and whistle-blower protection plans against retaliation, an investigation phase by the Administration in case of *prima facie* evidence of misconduct, a hearing before an internal disciplinary committee and finally a disciplinary sanction if the misconduct is proven. The sanctions can range from a simple note in the personnel file or the deferment of salary increments to summary dismissal for serious misconduct.

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<sup>1</sup> For instance Staff Rules of the United Nations, Regulation 1.1: “*I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.*”; See also for instance UNESCO Staff Regulation 1.9, or IMO Staff Regulation 1.9 with almost identical wording.

But this procedure can be flawed on many accounts. It starts with the official mandatory reporting which often does, quite understandably, usually not live up to its expectation: colleagues are reluctant to report on any form of misconduct by supervisors for fear of reprisals even if a whistle-blower protection policy exists to protect from retaliation. An Ethics Office will not always follow-up on complaints for lack of evidence or support by other staff members. The internal investigation undertaken by the Organization (usually by the internal oversight service) into alleged misconduct, while it should follow *The Uniform Guidelines for Investigations (2<sup>nd</sup> Edition)* as endorsed by the Conference of International Investigators of the United Nations Organizations held on 10-12 June 2009, does not always respect the principle of an independent investigation, which comprises the obligation to take account of inculpatory but also exculpatory evidence or to inform the person under investigation in a timely manner.

Finally, because of various past scandals within the United Nations system (for instance the corruption related to the *Oil-for-Food Programme*), international organizations seem nowadays to expedite disciplinary procedures by applying a 'zero tolerance' policy, which often results in summary dismissal even for what seems to be minor misdemeanours. This raises concerns as disciplinary procedures, while supposed to act as a deterrent, are thus mainly used as punishment and do not fulfil their other social function anymore, which is literally to discipline an individual and to give him a second chance.

The different international Administrative Tribunals regularly have to decide on disciplinary cases. Thus the Administrative Tribunal of the ILO (ILOAT) has always stated that where the staff member denies misconduct, the onus is on the Administration to prove the misconduct beyond reasonable doubt. The new UN Appeals Tribunal on the other hand has recently rejected this standard of proof: in UNAT Judgment 2011-164 it decided that because disciplinary cases are not criminal and that liberty is not at stake, misconduct must only be established by clear and convincing evidence, which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – the truth of the facts asserted has only to be highly probable.

Clearly, notwithstanding the fact that the new standard of proof of UNAT seems also problematic, allowing for abuse of purpose as staff might be summarily dismissed even when doubts exist as to their misconduct, the reform of the internal justice system of the United Nations has so far not succeeded in harmonizing the international civil service law.

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## Advisory Opinion from the International Court of Justice

### **Request for Advisory Opinion from the International Court of Justice (ICJ) on Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development**

In a previous newsletter (July 2011) we reported on the ILOAT Judgment No. 3003 rejecting IFAD's Request for Suspension of Execution of Judgment, pending the advisory opinion of the ICJ on the competence of the ILOAT to hear a case of a former employee of the 'Global Mechanism', for which IFAD denied legal ties.

The ICJ has now concluded that on the examination of her offer of employment and the renewals of her contract, that an employment relationship was established between the employee and the Fund, and that this relationship qualified her as a staff member of the Fund. Finally, the ICJ did not see any fundamental fault in the procedure of the ILOAT, and therefore found that the decision given by the Tribunal in its Judgment No. 2867, which awarded damage for irregular dismissal, is valid.

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*\*Laurence Fauth, FICSA's Legal Advisor, provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: [www.unattorney.com](http://www.unattorney.com). The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice, nor does it necessarily express the views of FICSA. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice. The author wishes to express appreciation to Maximilian Girod-Laine, Legal Counsel for the Staff Union of UNESCO, for his contribution to this newsletter.*