



**World Bank Administrative Tribunal**

**2009**

**No. 397**

**AG,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**AG,  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Jan Paulsson, President, Francisco Orrego Vicuña, Sarah Christie, Florentino P. Feliciano, Zia Mody, Stephen M. Schwebel, and Francis M. Ssekandi, Judges. The Application was received on 11 August 2008. The Tribunal granted the Applicant anonymity on 26 August 2008. The Applicant also requested a number of documents, some of which related to internal deliberations at the Bank, which the Tribunal addressed in an Order issued on 4 May 2009.

2. The Applicant contests: (1) the Bank's decision to withhold notification to him of the fact and content of its referrals of confidential and personnel information to the United States ("U.S.") Department of Justice, Fraud Section ("DOJ"), the U.S. Internal Revenue Service, Criminal Investigations Division ("IRS"), the Swiss authorities, and the U.S. Attorney's Office for the District of Columbia ("U.S. Attorney's Office"); and (2) the Bank's decision not to conduct a preliminary investigation into the Applicant's complaint of a violation of his confidentiality by the release of confidential information to a reporter for U.S. News & World Report.

#### **FACTUAL BACKGROUND**

3. The Applicant worked at the Bank from 1988 until 19 June 2003. His position as task manager was terminated following an investigation by the Department of

Institutional Integrity (“INT”) which found that he had received a bribe of \$12,000 from a contractor working on a Bank-financed project. The Applicant unsuccessfully challenged the termination of his employment before the Appeals Committee but did not bring his case before the Tribunal. The time-limit for bringing his grievance before the Tribunal has now expired.

4. The Applicant alleges that by early 2004 he noticed that he and his wife endured regular detentions and personal searches upon entering the U.S. after travel. On 23 November 2004 the Applicant asked the Bank whether it had referred his case to any national authorities. The Bank did not reply.

5. In fact, soon after the Applicant’s position was terminated, on 24 July 2003, the Bank referred his case to DOJ. The Bank believed it had collected evidence indicating that the Applicant may have violated the laws of the U.S. and Switzerland. It informed DOJ of its obligation to notify the Applicant of the referral and its content, unless special circumstances justified delaying notification. The Bank indicated that DOJ would have to make a written request to the Bank to delay notification.

6. DOJ on 5 August 2003 requested a delay of six months in order “to preserve the integrity of the evidence and witnesses to which [the Applicant] and others still have access, as well as to avoid frustration of the government’s efforts to identify other potential participants in the alleged crimes.”

7. About the time the six-month period was to expire on 4 February 2004, the Bank referred the Applicant’s case to IRS by a letter similar to the one sent to DOJ. IRS also asked the Bank to delay notifying the Applicant for six months. A few months later, on 4 June 2004, the Bank referred the same case to the Swiss authorities. The letter to the

Swiss authorities was different from the letters sent to DOJ and IRS in that it did not inform the Swiss authorities of the requirement to notify the Applicant. Nevertheless the Bank did not notify the Applicant of the referral to the Swiss authorities.

8. Almost one year after the last documented request for delay in notification from IRS, on 27 January 2005, IRS made another request for the Bank to delay for six more months' notification of "any referral(s) to any governmental agency, U.S. or others. Such a disclosure could have a negative impact on the investigative plan."

9. On 22 June 2005, the Swiss authorities informed the Bank that they did not plan to pursue any charges against the Applicant (the "Swiss Order"). On 12 July 2005 IRS also informed the Bank that they did not intend to investigate the Applicant further. DOJ reached a similar conclusion. In deciding not to pursue the investigation and prosecution of the Applicant, the Swiss authorities observed in particular that the INT Report of Investigation ("INT Report") forming the basis of the bribery charges is based on confidential statements that are not admissible in court; the alleged bribery had occurred in Africa at a time when bribery of foreign public officials was not an offense in Switzerland; and the U.S. authorities which had "announced a request for international mutual assistance" had in the meantime "dismissed their procedure." The Swiss Order was provided to the U.S. authorities with a request to advise the Applicant accordingly as required under the Treaty of 25 May 1973 between the two countries on international mutual assistance in criminal matters. The Applicant was so informed by DOJ. The Bank notified the Applicant on 20 July 2005 of the referrals to the criminal authorities but did not send any of the documents. The Applicant asked for the documents on 11 and

22 August 2005, and on 2 September 2005 the Bank assured him that he would receive them “shortly.”

10. However, around that time a new President was appointed to the Bank, and it was decided that another national criminal authority would be contacted to pursue an investigation. After the Bank contacted the U.S. Attorney’s Office, the latter expressed interest in the case and on 21 September 2005 asked the Bank to delay informing the Applicant of the contents of the referral for two months. The reasons cited for the request for delay included: (1) preserving the integrity of the evidence; and (2) identifying culpable parties. On 23 September the Bank informed the Applicant that pursuant to DOJ’s request he would not receive any “documents or information pertaining to his case.” On 28 November 2005, six days after the expiration of the request, the U.S. Attorney’s Office requested delay of notification for six months, pending a grand jury investigation. On 26 May 2006 the U.S. Attorney’s Office requested another extension of six months and informed the Bank that the investigation was continuing under a new team of investigators.

11. Meanwhile, the Applicant filed a second Statement of Appeal before the Appeals Committee on 23 February 2006 challenging the Bank’s withholding of information in connection with the criminal referrals, as well as complaining about the leak of confidential information. On 10 August 2006 the Bank orally asked the U.S. Attorney’s Office for permission to release the information to the Applicant and the Appeals Committee. On 11 August 2006, on the basis that “disclosure [of the information] could potentially compromise law enforcement efforts,” the U.S. Attorney’s Office asked the Bank to wait six months from the date of the letter.

12. A series of further deferral requests were made by the U.S. Attorney's Office over the course of some two years. The latest deferral was for a period of two months and expired on 24 June 2009.

13. On 17 January 2006 the Applicant was contacted by e-mail by a reporter of U.S. News & World Report who asked him a number of questions in preparation for an article on fraud and corruption at the Bank. The questions included several references to very specific confidential information that seemed to originate from the INT Report of Investigation, including the names of specific Bank projects, the identity of certain consultants as well as some personal information. On 8 February 2006 the Applicant through his counsel forwarded a copy of the e-mail message to INT and asked that it investigate the leak. Two days later, INT informed the Applicant that it would not conduct an investigation because "[a]bsent credible information of an unauthorized disclosure by a staff member or staff members, it would be inappropriate for the Bank to engage in a fishing expedition." The Bank also stated that "[s]hould credible information come to the Bank's attention that a particular staff member or staff members may have been involved in such a disclosure, the Bank would of course review the matter closely in accordance with the investigative process set out in Staff Rule 8.01."

14. A few weeks later, an article was published in U.S. News & World Report not only naming the Applicant, but also including detailed information about the Bank's investigation of him, as well as references to the Bank's referrals of his case to various criminal authorities, their refusal to investigate and the subsequent referral to the U.S. Attorney's Office. The article referred to the INT Report, the INT investigators and other Bank staff members as well as some witnesses.

15. The Appeals Committee issued its recommendation on the issues in this case on 6 February 2008. It concluded that the Bank did not act arbitrarily when it decided to delay notifying the Applicant in light of the express request by the national authorities not to disclose the referral. In concluding that exigent circumstances existed to withhold the notification, the Bank “acted reasonably in deciding to delay providing the [Applicant] with the content of the referral.”

16. The Appeals Committee nevertheless found several procedural deficiencies on the part of the Bank. For example, there were several gaps of time during which the Bank should have but failed to notify the Applicant of the content of the referrals for no apparent reason; the Bank failed to show that with each request for deferral it undertook “a meaningful review of whether exigent circumstances existed”, and there was “little monitoring” to flag the expiration of the requests for deferrals by the national authorities, which could result in indefinitely delaying notification. The Appeals Committee also questioned, in view of the requirements in *C*, Decision No. 272 [2002], the Bank’s arguments that the four referrals constituted one continuous referral and that the Bank “may delay notification to the current or former staff member *for a reasonable time*, if the World Bank has received a written request from the prosecuting authority providing justification for delay.” The Appeals Committee questioned whether on that reasoning a four-year period was a “reasonable time” under the test provided in *C* for delay of disclosure of information in exceptional circumstances.

17. As to the alleged leak of confidential information, the Appeals Committee concluded that the Bank did not abuse its discretion in deciding not to conduct a

preliminary inquiry when the Applicant requested it, but questioned the Bank's failure to conduct a preliminary inquiry after the press article was published.

18. The Appeals Committee recommended that the Applicant be awarded monetary compensation of \$40,000 for the Bank's procedural failures, as well as costs in the amount of \$5,000. The Vice President of Human Resources accepted the recommendation on 13 March 2008.

19. Dissatisfied with this outcome, the Applicant brought his grievance before the Tribunal and sought: (1) to be informed of the fact and content of all referrals to any authority; (2) a letter of apology from the Bank; (3) a retraction of the article in U.S. News & World Report; (4) 15 years' salary to compensate him for his economic loss; (5) five years' salary to compensate him for moral damages; (6) legal fees and costs; and (7) any other relief as determined by the Tribunal.

#### PRINCIPAL CONTENTIONS OF THE PARTIES

20. The Applicant contends that the Bank secretly and improperly referred confidential information about him to national authorities and delayed unreasonably to notify him about the referrals, in violation of the Staff Rules and the Tribunal's jurisprudence. In addition, the Applicant alleges that the Bank improperly released confidential information to U.S. News & World Report.

21. The Bank asserts that its decisions were matters of managerial discretion. The Bank complied with its own guidelines, the requirements of the Staff Rules, and the Tribunal's findings in *C*, Decision No. 272 [2002]. It did not abuse its authority when it decided not to investigate the alleged leak of confidential information.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS



*Release of confidential information to outside parties without notifying the Applicant*

22. Staff Rule 2.01, paragraph 5.01, is applicable. In determining whether the Bank was justified in withholding the referral and its content from the Applicant, the Tribunal must interpret Staff Rule 2.01 (in effect at the time of the first referral in 2003), as did the Tribunal in *C*, Decision No. 268 [2002] (on jurisdiction) and *C*, Decision No. 272 [2002] (on the merits).

23. Staff Rule 2.01 prohibits disclosure of personnel information outside the Bank, except in limited circumstances. Paragraph 5.01 of Staff Rule 2.01 allows the release of certain staff records to persons outside the Bank without the authorization of the staff member concerned, including:

- (a) basic employment data ...;
- (b) compensation and pension information ...;
- (c) pension records ...;
- (d) visa status of staff and dependents ...;
- (e) pension, benefits and salary records ...;

...

Paragraph 5.01 further provides that

The Bank Group will not release other personnel information to outside parties, including member governments and their representatives, without the staff member's knowledge, except in cases of emergency situations or upon the advice from the Legal Department of the Bank to release information for legal proceedings, or law enforcement efforts. In such cases, the staff member will be notified as soon as reasonably possible of what information is released and to whom.

24. It is undisputed that the Bank referred confidential information to several criminal authorities but failed to notify the Applicant of the referrals or their contents. The Bank explains that following the Tribunal's decision in *C*, it established certain guidelines for criminal referrals.

25. The guidelines provide in relevant part:

[A]s a general matter, staff must be advised of the fact and content of a referral except when and where unreasonable: *e.g.*, exigent circumstances such as bodily harm, risk of flight, destruction of evidence, etc., criteria the Tribunal itself has identified.

Where there may be such exigent circumstances, a member government will be informed of the Bank's duty to its staff under *C v. IBRD/Staff Rule 2.01*, and the member government may ask the Bank, in writing, to withhold the fact and content of a referral from a staff member given the exigent circumstances, *e.g.*, a staff member suspected of being a member of Al Qaeda.

Procedurally, INT referrals typically involve a 2 step process: (i) INT contacts law enforcement authorities and asks whether they might be interested in information of possible criminal activity that INT has discovered; and (ii) if interested, documentary information concerning a staff member may then be provided to the authorities who decide whether to proceed with a criminal investigation.

Prospectively, following *C v. IBRD*, (1) when INT contacts the appropriate authorities, INT should advise the authorities at the outset of INT's duty to Bank staff under *C v. IBRD/Staff Rule 2.01*; and (2) if, as and when information concerning a staff member may be provided to the authorities to decide whether to proceed with a criminal investigation, INT should reiterate to the authorities in the transmittal letter ... INT's duty to Bank staff, and further advise that a member government may always request, in writing, that the Bank consider withholding the fact and content of a referral from a staff member, given whatever exigent circumstances they believe may be applicable – if any. Otherwise, INT must and will advise the Bank staff member(s) of the fact and the content of the referral.

INT has suggested that the Bank provide member governments 30 days within which to respond in writing, advising us whether exigent circumstances exist warranting not informing the staff member. Otherwise, the staff member would be informed as soon as the government says no need to keep things secret or the government does not reply within 30 days.

26. Consistently with its guidelines, in its referrals to DOJ and IRS, the Bank specifically stated:

Please be advised that pursuant to a ruling of its Administrative Tribunal, the World Bank is required to inform current and former staff members

who are the subject of criminal referrals of the provision and content of documents provided to government authorities, absent special circumstances. The World Bank may delay such notification ... for a reasonable period of time if the World Bank has received a written request from the prosecuting authority providing a justification for the delay.

27. The Tribunal finds that the guidelines incorrectly interpret *C* and the Staff Rule. Staff Rule 2.01 is clear and unambiguous. It prohibits the Bank from releasing confidential personnel information without a staff member's knowledge. However, in emergency situations, or upon advice from the Bank's Legal Department, the Bank may disclose such information to outside parties. When the Bank discloses information to an outside party, it must notify the staff member as soon as reasonably possible of what information is released and to whom. *C* was not meant to amend Staff Rule 2.01; it only allowed a narrow exception under limited circumstances and did not intend to allow delays in notification of months or years.

28. Neither the Staff Rule nor *C* provide for an outside party to request from the Bank in writing a delay of notification. The Staff Rule specifically provides that the release of information to an outside party without a staff member's knowledge is prohibited absent an emergency situation or advice from the Legal Department. Once the information is released, the fact and content of the release must be notified to the staff member.

29. The Tribunal in *C* observed that in exceptional circumstances certain delays may reasonably be justified, but such circumstances must be specific and the ensuing delay must be short in order to satisfy the Staff Rule requirement that the notification be made "as soon as reasonably possible." Speculation as to interference with witnesses or destroying evidence will not suffice and, in any event, delays such as those that have

occurred in this case clearly do not meet the requirements of the applicable Staff Rule or of the Tribunal's decision in *C*.

30. The record demonstrates that the Bank withheld the first three referrals (DOJ, IRS, and Swiss authorities) and their contents from the Applicant. The Applicant eventually became aware of the referrals as well as the referral to the U.S. Attorney's Office and requested to be provided with the contents of such referrals, but the Bank continued to withhold the content of the referrals. Almost six years after the first referral, and four years since the last referral, the Applicant still has not been notified of the content of the referrals, in clear violation of the strict language of Staff Rule 2.01, paragraph 5.01, and the Tribunal's holding in *C*. Moreover, the Bank has not shown a valid reason for delay of the notification.

31. The Bank contends that it followed the procedures established in the guidelines. It referred the case to DOJ, IRS, the Swiss Authorities, and the U.S. Attorney's Office. All three U.S. authorities repeatedly asked the Bank to defer notification of the Applicant because "of concerns that the Applicant could interfere with evidence and witnesses, and thereby jeopardize their investigation." The Bank asserts that it evaluated the authorities' request and found them justified because: (1) they were reasonable in view of the Applicant's "corrupt" conduct, his obstructionism and dishonesty during the INT investigation, and the "clear indications" that he "may have engaged in corrupt practices on a much wider scale"; (2) numerous witnesses testified before INT on a confidential basis and the Bank needed to protect their identity to prevent witness tampering; and (3) a significant amount of information could be compromised if the Bank notified the Applicant of the content of the referral to the U.S. Attorney's Office.

32. The Bank also makes a number of additional arguments as to why it was justified in withholding the information from the Applicant. The Bank cites for example its strong interest in ensuring that staff members do not violate local laws, as provided for in Principle 3 of the Principles of Staff Employment. The Bank cites the need to balance the interests of the staff member with those of the national authority. The Bank argues that the U.S. Attorney's Office was continuing its investigation; because the documents provided to all three authorities were similar, release of the information could have jeopardized the U.S. Attorney's investigation. It also argues that failure to comply with a request from the U.S. authorities would have been viewed as uncooperative and possibly obstructionist. As a consequence the national authorities may be less likely to review fraud and corruption cases referred by the Bank in the future.

33. None of these justifications were contemplated in *C*, which identified a limited number of factors that would justify a delay in notification but did not list those argued by the Bank. The Tribunal accepts the Applicant's contention that because the due process rights of an applicant are directly affected by failure to provide notification of any disclosure of confidential personnel information to outside parties, the prohibition in Staff Rule 2.01, paragraph 5.01, must be construed narrowly and any exceptions must be strictly circumscribed, consistently with the Tribunal's examples of "legitimate risk of flight, evidence tampering, or witness intimidation." The Bank failed to show that the Applicant was a flight risk or that he would tamper with the evidence or intimidate witnesses. The due process rights of a staff member, including the Applicant, must be protected, and as the Tribunal said in *C*, Decision No. 272 [2002], para. 25,

Confidentiality is one thing, violation of due process quite another. The [Department] is not exempt from the strict observance of the Bank's rules,

including principles of due process, particularly where they concern the rights of staff members. The Applicant has rightly argued that in criminal investigations, the standards applied must be construed more strictly than would be the case in matters that do not so seriously affect a staff member's reputation and employment prospects.

34. The Applicant argues that making four different referrals to different national authorities over a three-year period is akin to shopping for a forum willing to prosecute the Applicant. The Tribunal agrees. A decision to make a referral to national authorities to initiate criminal proceedings against a staff member must be based on a written opinion of the General Counsel of the Bank. The Bank should outline instances when such referrals may be made and the procedures to be followed in doing so. The procedures established should ensure that staff members are provided with information regarding such referrals in a timely manner, as a matter of due process and in compliance with the Staff Rules. Before referrals are made the Bank should consider whether there is sufficient basis for a criminal prosecution in a state of competent jurisdiction. In the instant case, in particular, after receiving notification from three different criminal authorities in the summer of 2005 that no charges would be filed against the Applicant, the Bank should have closed the case and not looked for another authority that might be willing to investigate further. Moreover, after the three criminal authorities had notified the Bank they would not bring charges against the Applicant, the Bank should not have continued to withhold from the Applicant the content of the referral. Instead the Bank made yet another referral to the U.S. Attorney's Office and to this date continues to withhold contents of the referrals.

35. The Applicant further argues, and the Tribunal agrees, that even under its own guidelines, the Bank failed to justify its conduct. Specifically, the Bank failed to monitor

the expiration dates of the requests for delay. There were several gaps between requests during which the Applicant was not notified of the referrals as required. The Bank failed to follow up expeditiously on its own letter promising disclosure of the content of the first three referrals. Furthermore, the Bank did not respond to the requests for deferral, nor did it show evidence of adequate evaluation of the merits of such requests.

36. The Tribunal recognizes that cases of fraud raise difficult questions for the Bank and that the Bank is driven by a desire to cooperate with local and international authorities in efforts to eliminate corruption. However, that does not give the Bank the liberty to do so at any cost, in violation of its own rules and regulations.

37. In the course of the written proceedings, the Applicant requested disclosure of a number of privileged documents, as well as some of the missing requests for delay of notification and other records of communication between the national authorities and the Bank. The Tribunal made a very limited order pertaining to the most recent request for delay of notification from the U.S. Attorney's Office. In light of its finding that the Bank wrongly withheld timely notification of the referrals to the Applicant and the contents of such referrals, it is now ordered that the Applicant be provided copies of all referrals to date and their contents.

*The leak of confidential information to U.S. News & World Report*

38. The Applicant alleges that the Bank abused its discretion when it refused to investigate the leak to U.S. News & World Report. The Applicant argues that he "did not cite rumors, hearsay, nor did [he] rely on questionable sources"; he "did not include unverified inferences or mere suppositions." Instead, he submitted a copy of an e-mail message containing a written questionnaire from a reporter which clearly showed that the

reporter had access to some very confidential information that could only have originated from INT. The Bank failed to conduct a preliminary analysis in spite of this clear evidence that the reporter was familiar with the INT Report.

39. The Applicant speculates that the reporter must have had a point of contact within INT in addition to the Bank President, that the Bank must have been protecting its own staff and covering up its own misconduct, and that the Bank's motive in releasing confidential information to the press must have been to promote the agenda of the then Bank President.

40. The Applicant is unpersuaded by the Bank's claims that INT staff members could not have leaked the information because they all sign a confidentiality agreement upon joining INT. Even the Bank acknowledged that it does not "logically preclude the possibility that agreements are sometimes breached."

41. The Bank argues that the decision to initiate a preliminary inquiry is a matter of managerial discretion. The Applicant's assertion that the reporter obtained his information from within the Bank is not supported by the evidence and is speculative. The information the reporter seemed to have was not only available to Bank staff members but also to other entities outside the Bank, including DOJ, IRS, the Swiss Embassy, the federal prosecutor in Bern, Switzerland, and the Applicant's lawyer and his or her assistants. Consistent with Tribunal jurisprudence, INT could not consider a complaint unless there was "some support for accusations against a staff member" and accordingly decided not to pursue the Applicant's complaint.



42. In addition, the Bank argues that the Applicant had no corroborating evidence or witnesses; had the Bank decided to investigate with such limited information, it would have engaged in a fishing expedition.

43. The Bank listed the factors it considers when determining whether allegations of a leak merit the commitment of investigative resources. To warrant an investigation, a sufficient number of factors had to be met, which was not the case.

44. In the Tribunal's opinion, it is undisputed that the decision to investigate a leak is a discretionary managerial decision made by INT. INT is not obligated to undertake a preliminary investigation of every complaint by a staff member. As the Tribunal stated in *Sjamsubahri*, Decision No. 145 [1995], para. 9,

[the] complaint is merely the starting point for consideration by the Bank of whether or not it will commence disciplinary proceedings. ... Before initiating disciplinary proceedings in such circumstances the Bank must, in a necessarily preliminary way, decide whether there is sufficient substance to the complaint in terms both of evidence and gravity to warrant taking the matter further.

The Tribunal in *Koudogbo*, Decision No. 246 [2001], para. 43, explained that “a preliminary inquiry cannot be launched on the basis of rumors or allegations from questionable sources.”

45. The factors listed by the Bank for determining whether allegations should merit the investment of resources include: (1) overall specificity and credibility of the complaint; (2) the existence of corroborating evidence; (3) the complainant's and witnesses' willingness to cooperate; (4) the timing and motivation for filing a complaint; and (5) its jurisdiction to investigate the matter.

46. The Tribunal notes that INT has jurisdiction to investigate the leak of confidential information. The Staff Rules prohibit the disclosure of confidential information and INT

may investigate breaches of the Staff Rules. In view of the sensitivity of INT's work, it is of particular importance that INT staff members respect the confidentiality of information with which it is entrusted.

47. With respect to the first factor, the record indicates that the Applicant forwarded the reporter's e-mail message to INT asking that it investigate the apparent leak of confidential information. It appears that most of the information in the e-mail message originated in the INT Report and other investigative records collected by INT. However, INT had referred the case to outside parties and presumably included various documents with the referrals. In addition, several individuals from within the Bank had access to the information, including staff in the Legal Department, the Appeals Committee and of course INT. The complaint clearly – if understandably – lacked specific information leading to a particular person or persons who could have leaked the information.

48. While in *AF*, Decision No. 393 [2009], an inquiry was conducted without any particular staff in mind, it was clear that the information could have been leaked only from within the Bank. A simple search for e-mail messages sent on a particular day to the reporter who wrote the article might have been sufficient to uncover the staff member responsible for the leak. This case involves a leak about a completed INT investigation of an individual (the Applicant) whose position had been terminated three to four years previously as a result of the INT investigation. The pool of potential individuals who could have been responsible for the leak included not only Bank staff but also personnel of other governmental authorities, from within and outside the U.S. While the Bank does not have jurisdiction to investigate individuals outside the Bank, it might at least have conducted a preliminary internal investigation to determine whether someone from within

the Bank was responsible for the leak. Furthermore, after the article was published, it was reported that certain unnamed Bank staff members had been interviewed for the report and had provided information to the reporter, but the Bank did not reconsider the Applicant's complaint at that time.

49. The facts of this case suggest strongly that the leak could have originated in INT, in which case the matter should have been referred for an independent investigation to determine the validity of the Applicant's complaint. As discussed in *AE*, Decision No. 392 [2009], paras. 44-45, it is hardly adequate to leave it to INT to conduct an investigation of its own staff. As in *AE*, an inquiry could have been conducted by the Information Security Group to determine whether any INT staff member may have leaked information by e-mail. Should INT staff be implicated, the intervention of an independent investigator would be proper to ensure the integrity of the future investigative process.

50. The Tribunal finds that the failure to conduct an investigation of the leak of confidential information upon a complaint by the Applicant was a violation of the Bank's rules and could potentially prejudice a staff member's due process rights.

#### *Damages*

51. The Applicant makes a number of requests in his Application, including further monetary compensation and the recovery of legal fees, which the Tribunal considers unwarranted. The fact that the Tribunal views the Bank's transgressions of Staff Rule 2.01, paragraph 5.01, as more extensive than did the Appeals Committee does not necessarily lead to greater recovery. Following his appeal before the Appeals Committee, the Bank, on recommendation of the Appeals Committee, gave him

compensation on account of procedural irregularities in an amount of \$40,000 plus an additional \$5,000 for attorney's fees. This was more than adequate given the circumstances of this case.

DECISION

For the reasons discussed above the Tribunal decides as follows:

- (i) the Bank shall provide the Applicant no later than 30 days from receipt of this judgment all documents referred to the criminal authorities to date, since 2003; and
- (ii) all other claims are dismissed.

/S/ Jan Paulsson  
Jan Paulsson  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, DC, 1 July 2009