

## Decision No. 242

Amadou B. Cissé,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal, composed of Robert A. Gorman, President, Francisco Orrego Vicuña and Thio Su Mien, Vice Presidents, and A. Kamal Abul-Magd, Bola A. Ajibola, Elizabeth Evatt and Jan Paulsson, Judges, has been seized of an application, received on October 31, 2000, by Amadou B. Cissé against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. The case was listed on March 6, 2001.

2. This case involves the interpretation and application of Staff Rule 3.01, paragraph 5.02, in particular whether a decision by the Respondent, following an investigation in 1999 by the Office of Professional Ethics (OPE), that the Applicant engaged in misconduct was valid or tainted by both substantive and procedural flaws. The Staff Rule in question reads as follows:

A staff member who decides to become a candidate for, or to accept appointment to, national public office shall resign from service with the Bank Group. A staff member may not be a candidate for, nor accept appointment to, any other public office without prior approval of the [Outside Interests] Committee. Activity in pursuit of public office or its duties shall take place outside Bank Group office hours or while the staff member is on leave and shall not employ Bank Group services, supplies or facilities.

### **The Applicant's career in the Bank**

3. The Applicant is a citizen of Niger. He joined the Bank in 1982. After steady progress in his career, for which he received very positive performance evaluations, he became in 1990 a Principal Transport Specialist, level 25. In 1996, the Applicant was appointed Minister of State for Economy, Finance and Planning in the Government of his country; later in the same year he became Prime Minister. One month after the first of these appointments in Niger, he submitted his resignation from the Bank, but only after having been reminded by the Bank of the need for him to do so.

4. After having ended his government service, the Applicant in early 1998 sought reappointment to a World Bank position. At the time, he did not obtain a regular appointment but only a long-term consultant appointment. The Applicant argues that this decision was contrary to a promise made to him at the time of his resignation from the Bank that he would be rehired if he so desired. After the question of his reappointment was taken up by the Applicant with some Executive Directors of the Bank, the Applicant was allowed to search for a regular position, but finally was limited to a one-year fixed-term appointment as a level 25 Principal Transport Specialist in the Transportation, Water and Urban Development Department. The Applicant then sought and obtained a developmental assignment with the Privatization and Advisory Services Unit of the International Finance Corporation (IFC).

5. It has since become clear, particularly from the Respondent's answer, that these difficulties in the Applicant's reappointment and rehiring derived from an allegation, by someone described by the OPE as an employee of the United States Agency for International Development (USAID), that the Applicant had engaged in corrupt acts both when serving as Prime Minister and as a Bank staff member. A "C" flag was placed in the Applicant's personnel file, which the Bank has described as not prohibiting re-employment but ensuring that a manager

intending to hire him would be informed of these allegations.

6. The result of a preliminary inquiry subsequently conducted by the Bank in 1998 was that the corruption allegations were not sustained. Indeed, the record shows that the USAID office in Niger was closed at the time of the conduct attributed to the Applicant, and that the United States Embassy in that country (which was handling USAID's functions) had no knowledge whatsoever of the allegations, let alone supported them. Moreover, the allegations were also disavowed by the representative of the European Union in Niger. However, in the process of investigation within the Bank, former colleagues of the Applicant expressed reservation about his interpersonal skills and his ability to work with fellow staff members. Such assessments were manifestly unrelated to the object and purpose of the 1998 inquiry into corruption and should not have been included in the findings.

### **The Applicant's interest in political events in Niger**

7. In April 1999, the President of Niger was assassinated. This event led to three initiatives on the part of the Applicant.

8. First, while on mission to Cameroon, the Applicant requested authorization from the IFC to attend the funeral of the President. Authorization was granted.

9. Second, the Bank was requested by the government of Niger to authorize a secondment of the Applicant as an economic advisor for nine months. This request was also approved by the IFC. The Respondent has contended that the Applicant himself drafted the pertinent letters of request and authorization. In any event, the fact remains that authorization was given by the appropriate officials.

10. It was later decided by the Bank that the Applicant could only take up this function on leave without pay. The Applicant was not amenable to this arrangement, and therefore did not request authorization from the Outside Interests Committee, as would have been required by Staff Rule 3.01, paragraph 5.02, had he taken up that post.

11. The third, and most important, step taken by the Applicant was to inform officials in the Bank (no later than early July 1999) of the possibility that he would be a presidential candidate, and that if this possibility materialized he would resign. The Applicant also informed the Bank on July 12 that he would take his annual leave in Niger for about a month beginning on July 15, 1999.

12. It has been contended by the Respondent that the Applicant made undue claims of expenses in connection with trips to Africa. These, however, are matters unrelated to the finding of misconduct presently before the Tribunal. Furthermore, the Applicant explained these circumstances in the context of administrative verification. The Applicant may in some instances have failed to follow proper procedures in the preparation of his travel reports and related documentation, but at no point has he been charged with wrongdoing in this respect.

### **Investigation by the OPE**

13. On July 12, 1999, the Applicant was informed in writing by the OPE of its intention to investigate allegations that he had been acting as an advisor to the Prime Minister of Niger and participating in national politics, in violation of Staff Rule 3.01, paragraphs 5.01 and 5.02. The Applicant responded in writing to these allegations the next day. He reiterated that if he became a candidate for the position of President he would leave the Bank, but explained that this would not be known until some time in September. Until then, the selection of candidates was a process internal to the political parties that did not require his direct involvement.

14. The process of selecting candidates continued while the Applicant was on annual leave. The Applicant's political party decided on August 1, 1999 to nominate him as its candidate for the presidential elections. As required under Niger's electoral laws, the Applicant then had to file his candidacy with the Ministry of the Interior by the established deadline of August 27, 1999. The Supreme Court was to decide in early September

which candidates to retain.

15. Following inquiries made by the Bank's Human Resources Department about his candidacy, the Applicant claims to have expressed again his intention to resign by faxed letter of August 4, 1999 and by email of August 9, 1999. The Respondent denies ever having received the August 4, 1999 letter and asserts that the August 9, 1999 email was not received until March 2000. At any rate, the Applicant submitted a new letter of resignation dated August 20, 1999, to become effective August 27, 1999, that is, the date when candidates had to register with the Ministry of the Interior. The Applicant indeed so registered, but ultimately his name was not retained by the Supreme Court.

16. Meanwhile, the OPE investigation led to a Report dated August 5, 1999, and then culminated on August 16, 1999, when a Managing Director of the Bank issued a finding of misconduct on the basis of that Report. Although it appears that the Applicant was informed by telephone of some aspects of this finding, he was not given a written copy of the memorandum in which that finding was articulated until January 13, 2000, at a time when IFC managers were expressing a willingness to rehire him. On this last date, he was also given a copy of a letter of January 12, 2000, informing him that, in the light of the finding of misconduct, he could not be reinstated or given an appointment with the World Bank Group.

17. On February 11, 2000, the Applicant filed an appeal with the Appeals Committee. The Committee, after holding a hearing, recommended in substance:

(i) the August 16, 1999 misconduct decision and the January 12, 2000 ban on rehiring should be withdrawn;

(ii) as redress for procedural flaws and abuse of discretion in connection with the OPE investigation, the Applicant should be permitted to choose either (a) immediate appointment to a suitable consultancy position in IFC for a guaranteed period of six months at his most recent salary level, or (b) a lump sum payment of six months' net salary;

(iii) as redress for the OPE's failure to provide the Applicant with proper notice of the misconduct decision, the Applicant should be paid an additional six months' net salary; and

(iv) the Applicant should be awarded all demonstrable legal fees.

The Bank rejected all but the recommendation that the Applicant receive six months' net salary for the improper notice. An application was then filed with the Tribunal. In it, the Applicant requests that the decisions of August 16, 1999 and January 12, 2000 be rescinded, that all references to them be removed from his files, and that he be appointed retroactively to January 12, 2000. Compensation is also sought, as shall be examined further below.

### **The meaning and extent of Staff Rule 3.01, paragraph 5.02**

18. As noted earlier, Staff Rule 3.01, paragraph 5.02, reads as follows:

A staff member who decides to become a candidate for, or to accept appointment to, national public office shall resign from service with the Bank Group. A staff member may not be a candidate for, nor accept appointment to, any other public office without prior approval of the [Outside Interests] Committee. Activity in pursuit of public office or its duties shall take place outside Bank Group office hours or while the staff member is on leave and shall not employ Bank Group services, supplies or facilities.

19. The Applicant and the Respondent have advanced differing interpretations about the meaning and extent of Staff Rule 3.01, paragraph 5.02. The Applicant argues, with respect to the first sentence, that he could not have "decided" to become a candidate for national public office under the law of Niger until August 27, 1999, the date of registration of candidates with the Ministry of Interior. Moreover, the Applicant adds, even after registering he could not have been considered a candidate until cleared by the Supreme Court; actual public

campaigning would only have started at an even later date. Furthermore, in the Applicant's view, the third sentence of paragraph 5.02 applies both to "national public office" and to "other public office," the latter being the situation envisaged in the second sentence. In this interpretation, activity in pursuit of public office – national or other – can take place, without the staff member having to resign, if it is done outside Bank Group office hours or while the staff member is on leave.

20. In the Respondent's view, to the contrary, paragraph 5.02 is designed to prevent a public perception that the Bank is supporting one political candidate, or one political party over another, and this can happen much earlier than the date of formal registration of candidates. The Bank argues that the Applicant was involved in extensive campaigning, appeared at party conventions and meetings, and received considerable press coverage, thus creating the type of conflict of interest that paragraph 5.02 was designed to avoid. According to the Bank, the moment at which the conflict arises does not depend on national electoral laws or when the staff member becomes an officially approved candidate, but is generally related to the fact of pursuing public office. Resignation from Bank service is, therefore, required at the outset of the political process. The Respondent also argues that, in this light, the third sentence of paragraph 5.02 applies only to the situation envisaged in the second sentence and not to that relating to national public office.

21. The Tribunal must therefore first establish the proper meaning and extent of paragraph 5.02. There is no doubt that the first sentence relates to national public office, such as Minister or President. Although resignation is required of a staff member who "decides to become a candidate" for such an office, the word *decides* is ambiguous, and the timing of the resignation requirement is not expressly stipulated. Nor is there any doubt that the second sentence relates to "other" public office, for example becoming a member of a government advisory body, and this requires approval of the Outside Interests Committee.

22. Another ambiguity in the drafting of paragraph 5.02 is in the third sentence, i.e., whether it applies only to "other" public office or to "national public office" as well. As a matter of textual interpretation, the sentence seemingly could apply to both, as it does not make any distinction between national and other public office. This is true, however, only in respect of activity "in pursuit" of public office – which the Tribunal understands to contemplate the possibility of private exploration of support before deciding to embark upon a public candidacy. Activity relating to the "duties" of such office, on the other hand, cannot apply with respect to national public office as this assumes that the staff member has already taken up the office, which requires under the first sentence of paragraph 5.02 prior resignation.

23. The Tribunal must, however, look beyond the textual interpretation and attend to the object and purpose of paragraph 5.02. It must be stated at the outset that the answer does not depend on the definitions contained in the electoral laws of Niger or for that matter on other national legislation. The Tribunal has held that questions of interpretation of rules governing the employment relationship must be decided by application of "the internal law of the Bank as the law governing the conditions of employment." (*de Merode*, Decision No. 1 [1981], para. 27.) Another administrative tribunal has established that "Staff Regulations should be interpreted in themselves, with due regard to their purpose and independently of national legislation." (*Schaffter*, ILOAT Judgment No. 477 [1982], para. 6 of considerations.) This does not, however, exclude reference to national legislation to shed light upon some questions of fact that may arise.

24. It follows that the Bank may well be correct in claiming that a conflict of interest could arise before the formality of the official approval of a candidacy under national law. But on the other hand, such a conflict of interest under the first sentence of paragraph 5.02 does not necessarily arise at the first stage of the complex process of becoming a candidate. A staff member may engage in a number of activities "in pursuit" of public office or of becoming a candidate, such as consultations with political associates, soundings of political parties, preparation of a program, and the like. Until the decision has been made to become a candidate, these activities do not create a conflict of interest per se and may be carried out under the third sentence of paragraph 5.02 outside office hours or while the staff member is on leave, provided they do not employ Bank Group services, supplies or activities. The line under that sentence separating legitimate activities in pursuit of national public office from activities that do involve a conflict of interest is often fine.

25. The Tribunal must draw that line in the specific circumstances of this case, and thus establish whether the activities by the Applicant in pursuit of the Presidency of Niger in fact triggered the conflict of interest that paragraph 5.02 envisages. Here again the views of the parties are radically different. The Applicant contends that all his activities fell within the third sentence of the paragraph and that resignation was required only when formal registration of the candidacy took place. The Respondent counters that all of the Applicant's political activities created a conflict of interest that merited the finding of misconduct, and that his resignation should have been submitted much earlier (and was in fact repeatedly requested).

26. The Tribunal has held that in disciplinary cases, it may examine: (i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the Bank; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed. (*Carew*, Decision No. 142 [1995], para. 32.) The Tribunal has also held that in disciplinary matters, its review is not limited to determining whether there has been an abuse of discretion but encompasses a fuller examination of the issues and circumstances. (See *Mustafa*, Decision No. 207 [1999], para. 17; and *Planthara*, Decision 143 [1995], para. 24.)

### **The facts and the issue of misconduct**

27. The OPE Report of August 5, 1999, on which the finding of misconduct was based, refers to four activities of the Applicant which the Respondent believes are contrary to the Staff Rule under discussion: (i) formally announcing his candidacy for president; (ii) nomination by his political party as its candidate; (iii) appearing at party convention meetings to campaign for his nomination; and (iv) giving a speech at the national party convention thanking his supporters for their confidence in him.

28. There is no doubt that the Applicant was seeking the nomination of his party to become the presidential candidate. This activity does not, however, necessarily go beyond what is tolerated as activities undertaken in "pursuit of public office" described in the third sentence of paragraph 5.02 discussed above as long as the Applicant does not publicly declare his candidacy. Under Niger's electoral law, the Applicant could not formally announce that he was a presidential candidate until registration and the fulfillment of other requirements, and, as will be developed immediately below, there is no convincing evidence to suggest that he could have made such an announcement before the registration date.

29. In fact, the evidence in the OPE Report supporting the Bank's findings is not sufficiently convincing, as it consists of newspaper articles and other secondary sources. For example, a BBC Summary of World Broadcasts dated June 29, 1999 quotes a report by Radio France Internationale of June 27 which states first that the Applicant "has announced his candidacy in the Niger presidential election," but then adds that the Applicant "hopes to be nominated." The Applicant vehemently denies having attended the party's convention or having delivered a speech at such meeting. The information based on newspaper articles which formed the basis of the OPE Report was not corroborated by the type of independent evidence which one would expect to be presented in the context of the serious allegations raised in a disciplinary case. Moreover, the Bank's Resident Representative in Niger provided much of the information used against the Applicant, and, at the accuser's request, his identity was not disclosed to the Applicant. This fact inevitably detracted from the reliability of the information.

30. The Bank has also submitted in support of its decision a video which, it claims, was prepared by Niger's National Observatory of Communications, and which allegedly shows the Applicant attending his party's nominating convention. This video was not part of the evidence upon which the misconduct decision was based, and therefore cannot justify the disciplinary action. Moreover, the Applicant has provided documentation from the National Observatory of Communications seeming to disavow any connection with the video. Finally, the Applicant asserts that the footage of him was not taken on the occasion of that convention. As for a political advertisement published in a newspaper in connection with the Applicant's candidacy, it proved to have been unauthorized by him.

31. It follows from the above that the facts have not been established to the extent claimed by the Bank. Quite



true, the Applicant's activities were on the borderline of what is permissible under paragraph 5.02. But precisely in such a situation, particularly given the multiple ambiguities of the Staff Rule and the significant disciplinary consequences, the Applicant should be given the benefit of the doubt. Moreover, if a conflict of interest had arisen, the Bank would assuredly have taken quick steps to disassociate itself from the Applicant. This was not done. There appears to have been no public perception that the Bank was in any way involved in Niger politics. The Applicant's resignation was only accepted by letter of a Vice President of the Bank dated September 17, 1999 – that is, almost a month after the resignation was submitted – extending at the same time warm congratulations on his candidacy. This is hardly what would be expected if the situation had greatly embarrassed the Bank, as it now claims. Moreover, the Applicant stated his intention, on several occasions, to resign effective August 27 or in September 1999, and at no time did the several Bank correspondents inform him that this was unsatisfactory and was indeed a form of misconduct.

32. The prior practice of the Bank is relevant here: on a number of occasions staff members have been seconded to ministerial positions in their government, these being by their very nature national public offices. Although the Bank points out that in some instances funding was provided by a different agency, this does not affect the question of compliance with paragraph 5.02. Campaigning to become the head of an international organization is not necessarily less political than campaigning for national public office. Yet this too has precedent in the Bank. In point of fact, Staff Rule 3.01, paragraph 5.01, relating to Public Employment, equates governments and international organizations for the purpose of employment or performing of services by the Bank's staff members.

### **Resignation, termination and ensuing sanctions**

33. The Tribunal must now consider the question of whether the sanction imposed, namely ineligibility for reappointment, had a legal basis in this case. The parties have very different views on this issue as well. Although the question has to a large extent become moot in the light of the Tribunal's conclusion that the facts do not support a finding of misconduct in the first place, the issue still merits consideration in view of its legal implications for the proper application of the Staff Rules.

34. The Applicant maintains that under Staff Rule 4.01 the Bank can only prevent reappointment of staff members who are "terminated" for misconduct, but not if the staff member has resigned as in the present case. The Bank argues that the termination of a staff member has two distinct consequences: first, it brings to an end the existing employment contract; and second, it makes the staff member ineligible for future re-employment with the institution. The fact that the Bank offered the Applicant the possibility of resignation, it is further argued, does not preclude the Respondent from bringing about the second such consequence, that is prohibiting further employment with the Bank.

35. The Tribunal cannot share the Respondent's view on the application of the Rule in this case. Here, resignation is required by Staff Rule 3.01, paragraph 5.02, in the context of seeking national public office, and it was with the intention of complying with this requirement that the Applicant submitted his resignation: it was not submitted as an admission of wrongdoing. It follows that in the context of this case, the sanction could not be imposed because there was no misconduct.

### **Observance of due process**

36. To turn to yet another reason for not upholding the Bank's decision here, the procedure followed in this case has been flawed by several important errors. The first is that the Applicant was never confronted with sufficient information about the factual allegations made by the Bank or provided by its Resident Representative in Niger. The Applicant was not afforded an adequate opportunity to rebut the substance of the allegations. Had this been done, a number of issues in doubt might have been clarified or corrected. The second error, for which the Respondent has admitted responsibility, was that the Applicant was not provided with a copy of the OPE Report before the decision on misconduct was reached. (See *Mustafa*, Decision No. 207 [1999], paras. 33-34.) The third error consists of the Respondent's failure to provide the Applicant with a copy of the August 16, 1999 misconduct memorandum until January 13, 2000.

37. It is true that the second procedural requirement is relatively new. The Bank may not have had the chance to put it into practice at the time the Report was finalized. Nevertheless, the long delay in providing the Applicant with a copy of the misconduct memorandum has no justification. A partial reading of the memorandum over the telephone by a Bank official does not satisfy the requirements of due process, even less so when the call was followed (prior to the Applicant's receipt of the written misconduct decision) by a letter from a Vice President of the Bank congratulating the Applicant on his candidacy.

38. There are two other questions that the Tribunal must consider in the context of due process and substantive irregularities. One such question is that when the political advertisement that precipitated the investigation directed against the Applicant was communicated to the OPE on or close to June 25, 1999, it was accompanied by a note from the Vice President of Human Resources that prejudged the whole investigation. In this note the Vice President stated: "he is clearly engaged in political activity. P/S [Please] advise on what we have to do re the Staff Rules." The Applicant has rightly complained that this was an unsolicited recommendation that interfered with the impartiality of the investigation. It was for the Managing Director to reach a conclusion on the facts and the evidence, and not for the Vice President in question to do so beforehand.

39. The other question relates to an unusual requirement contained in the Bank's letter of August 23, 2000, to the effect that its partial acceptance of the recommendations of the Appeals Committee would be conditioned on the Applicant's acceptance of a full and complete settlement of all claims against the Bank, including the waiver of the right to invoke the jurisdiction of this Tribunal. While the Applicant in this case decided not to accept the Bank's proposal, the Tribunal notes that such an approach by the Bank could be abusive in situations where the complainant is in a position of particular vulnerability.

### **Remedies**

40. The memorandum of August 16, 1999, and the letter of January 12, 2000, both from the OPE, must be rescinded. The decisions contained therein are tainted by both substantive and procedural irregularities. They are also to be removed from the Applicant's files, together with any prohibition on re-employment. The Tribunal expects that the "C" flag placed in the Applicant's file in 1998 has been removed by now, as the investigation undertaken then did not substantiate any of the allegations made. If not, it must be removed now.

41. The Applicant requests to be appointed to an open-ended appointment retroactively to January 12, 2000, with lost pay and benefits. The Tribunal cannot grant this request. The Applicant's resignation from the Bank and its subsequent acceptance stand; therefore, he held no position in the Bank after August 27, 1999. However, the Applicant is entitled to apply for a new position in the Bank Group without any restriction as from the date of this judgment. Whether or not he obtains a new position, or which type of position he obtains, is a matter to be decided by the Bank following its normal selection process.

42. There can be no doubt, however, that the Applicant has suffered damage as a consequence of the decisions affecting him. It is plausible that he could have obtained a position from January 12, 2000. This possibility was eliminated by the decisions now rescinded. The Tribunal therefore orders compensation in an amount equivalent to twelve months' net salary at the level of appointment the Applicant held at the time of his resignation.

43. In addition to the above, the Applicant is awarded seven months' net salary for the violations of due process that have been identified.

44. Costs in connection with the proceedings before this Tribunal are granted in the amount of \$14,000.

### **Decision**

For the above reasons, the Tribunal unanimously decides that:

- (i) the Respondent's decisions contained in the memorandum of August 16, 1999, and in the letter of January 12, 2000, both from the OPE, are quashed;
- (ii) the Respondent shall remove these two documents, together with any other reference to prohibition from re-employment, from the Applicant's files;
- (iii) the Respondent shall pay the Applicant compensation for damages in an amount equivalent to twelve months' net salary at the level of appointment he held at the time of his resignation;
- (iv) the Respondent shall pay the Applicant compensation for violations of due process in the amount equivalent to seven months' net salary;
- (v) the Respondent shall pay the Applicant costs in the amount of \$14,000; and
- (vi) all other pleas are dismissed.

/S/ Robert A. Gorman

Robert A. Gorman  
President

/S/ Nassib G. Ziadé

Nassib G. Ziadé  
Executive Secretary

At Washington, D.C., April 26, 2001