

The Administrative Tribunal,

Considering the complaint filed by Mr B. F. against the World Intellectual Property Organization (WIPO) on 15 March 2006 and corrected on 16 May, WIPO's reply of 24 August, the complainant's rejoinder of 30 October 2006 and the Organization's surrejoinder of 5 February 2007;

Considering the applications to intervene filed by Messrs H. N. D., A. J. L. H., C.-A. M. and J. J. M. on 7 August 2006;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant is a United States national, born in 1958, who joined WIPO in 1991 and currently holds grade P.3. At the material time, he was President of the Staff Council, an office he had held since January 2001.

In April 2005, following the publication in the local press of a series of hostile articles targeting the Director General of the Organization, the Staff Council circulated an open letter of support for the Director General, which staff were invited to sign. Some staff members felt strongly that, regardless of the issue of whether the Director General merited such support, it was not appropriate that the Staff Council and, by extension, the Staff Association, should be involved in such an initiative. Considering that the Staff Council owed them some explanations, they attempted to convene an extraordinary general assembly (EGA) of the Staff Association.

To that end, a petition containing 80 signatures – at least 20 are required for an EGA according to Article 8 of the Statutes of the Staff Association – was submitted to the Secretary of the Staff Association, and the Staff Council was asked to convene the EGA. Meanwhile, on 27 May 2005 one of the interveners in the present case sent an e-mail to the whole of WIPO's staff, encouraging them to attend the forthcoming EGA and informing them of the provisional agenda. He signed the e-mail on behalf of "the co-signatories of the petition for an EGA of the Staff Association". However, by an e-mail of 30 May the Human Resources Management Department (HRMD) informed staff that, in accordance with the rules governing Staff Association meetings, the EGA could not take place until the Administration had received a request to that effect from the Staff Council. It also reminded staff that the Organization's e-mail facilities were intended mainly for official use and pointed out in that connection that the co-signatories' general communication of 27 May had not been authorised.

As of 1 June 2005 a new Director of HRMD took office. Since the Staff Council appeared reluctant to organise the requested EGA, the co-signatories of the petition asked the new Director to authorise them to use a "generic e-mail box" for the purpose of conveying their views to all staff pending the holding of the EGA. This request was granted on 1 June, subject to certain conditions. The Director of HRMD emphasised that it was an exceptional measure which, he hoped, would "contribute to the enhancement of dialogue and [...] facilitate the exchange of viewpoints on the subject [of the EGA] amongst the members of staff".

The EGA took place on 13 June 2005. It culminated in a vote amongst Staff Association members on the question of whether new Staff Council elections should be held. Fifty members voted in favour, ten voted against and four abstained.

On 15 June the complainant's lawyer sent a letter to the Director General in which he accused the Administration of interfering in Staff Association matters, particularly by making facilities available to a group intent on undermining the authority of the Staff Council. He demanded that the Administration refrain from doing so and that no recognition or effect be given to the decisions taken at the EGA. He added that his letter was to be treated as a request for a final administrative decision. This letter was subsequently withdrawn.

On 20 June 2005 two members of the Staff Council resigned, leaving the Council with only six members. According to Article 13(1) of the Statutes of the Staff Association, the Council must have at least seven members in order to be validly constituted.

On 28 June the complainant and the remaining members of the Council announced that they too had resigned. That same day, one of those members reported to the Director General that, prior to that announcement, she had been approached in the cafeteria by four of the co-signatories, two of whom had spoken to her aggressively. The complainant also sent an e-mail to the Director General indicating that he had been verbally aggressed and insulted by the same four co-signatories in his office. He called on the Director General to intervene in order to prevent any recurrence of such actions. A Deputy Director General subsequently interviewed all those involved in these incidents and reported his findings to the Director General. On 14 July the complainant was placed on sick leave by his doctor.

On 29 July 2005 another lawyer acting for the complainant sent a letter to the Director General, demanding that sanctions be taken against three of the alleged aggressors as well as a former Staff Council President who, in a series of communications addressed to the staff over a period of several years, had criticised the complainant's handling of various Staff Association matters in terms which the latter considered insulting. The lawyer also requested that WIPO cover the complainant's legal costs, that an official apology to the complainant and his Staff Council colleagues be published and that, in view of the Administration's interference in Staff Association matters, the results of the imminent Staff Council elections be disregarded.

Those elections were held on 11 August 2005 and a new Staff Council was elected. By a letter of 7 September the Organization's Legal Counsel informed the complainant's lawyer that the Organization rejected the claims set out in the letter of 29 July.

On 21 October the complainant lodged an appeal with the Appeal Board. In addition to the claims for sanctions, for an apology and for costs put forward by his lawyer in the letter of 29 July, the complainant claimed 20,000 United States dollars in moral damages, a declaration that the EGA and the subsequent elections held on 11 August 2005 were null and void and the holding of new elections under the supervision of a neutral body. In its report dated 25 November 2005, the Appeal Board held that it was not competent to deal with matters relating to the EGA of the Staff Association. Regarding the complainant's allegations of "harassment and physical attacks", it recommended that the Director General "consider the right forum or body within WIPO to deal with the appeal in this regard". It added that in the absence of a clear provision on this matter in the Statutes of the Staff Association or in the Staff Regulations and Staff Rules, the Director General might wish to refer this aspect of the appeal to the Joint Advisory Committee and/or to the Ombudsman. The Board further recommended that all the complainant's other claims be rejected.

By a letter of 13 December 2005, which constitutes the impugned decision, the Director of HRMD informed the complainant's lawyer that the Director General considered, in accordance with the Board's recommendation, that he had no authority to declare the EGA and the subsequent elections to be null and void. Furthermore, he had decided to instruct the Internal Audit and Oversight Division to conduct an inquiry into his allegations of harassment and physical attacks, after which further decisions would be taken if necessary. Lastly, he agreed with the Board's recommendation that the complainant's other claims should be dismissed.

B. The complainant contends that the EGA and the ensuing Staff Council elections should be declared null and void, not only because the Administration interfered in Staff Association matters, but also because one of the polling officers responsible for organising the elections lacked the necessary neutrality and objectivity, since she was one of the co-signatories of the petition calling for the EGA.

He also submits that the Organization breached its duty to protect staff members from harassment and aggression. He accuses WIPO of having taken no action after he had been "physically attack[ed]" in his office on 28 June. Nor did it make any attempt to prevent the ongoing harassment by the former President, which caused him grave moral injury. He draws attention to the fact that these incidents, and particularly the fact that his moral integrity was called into question, led him to suffer a nervous breakdown, for which he is still receiving treatment.

Lastly, the complainant alleges that in return for the withdrawal of his lawyer's letter of 15 June 2005, the Director General undertook inter alia to prevent all further interference by the Administration in the activities of the Staff Association. He asserts that the Director General has failed to honour that undertaking.

The complainant asks the Tribunal to set aside the decision of 13 December 2005 and to order that sanctions be taken against the former President and against three of the co-signatories, for verbal and physical aggression against him and other Staff Council members. He also seeks a formal apology from the Administration and a written undertaking that neither he nor any other member of the Staff Council “regularly elected by the Ordinary General Assembly of 10 May 2005” shall suffer acts of discrimination by WIPO, including mobbing. He claims 20,000 United States dollars in moral damages and reserves the right to claim further damages in due course. He requests that the elections held on 11 August be declared null and void and that new elections, supervised by a neutral body, be ordered without delay. Lastly, he claims costs.

C. In its reply WIPO submits that, to the extent that it is directed against the Director General personally, the complaint should be dismissed, since the Tribunal’s Statute and Rules only allow the Tribunal to hear complaints against organisations. It considers that the complainant’s allegations concerning acts committed in 2004 or earlier are irreceivable; not only is it unclear what administrative decisions are being impugned in connection with these acts, but the complainant did not challenge any decision taken during that period within the applicable time limit. In the Organization’s view, the only allegations that are receivable are those relating to the alleged aggression on 28 June 2005 and the elections held on 11 August. It emphasises that the complainant can only file a complaint on his own behalf; he does not have *locus standi* to file a complaint on behalf of the Staff Council.

WIPO contends that it is entitled to make its facilities available to staff members as it sees fit. In authorising the co-signatories of a petition for an EGA to use its e-mail facilities it did not need to obtain the agreement of the Staff Council, given that the Statutes of the Staff Association provide that an EGA can be convened by an entity other than the Council itself. Had it not granted the co-signatories’ request, it might have been accused of restricting freedom of expression. Furthermore, the complainant has produced no evidence to support his allegation that the Administration clearly supported those who allegedly attacked him.

Referring to Judgment 78, WIPO submits that the Tribunal is not competent to rule on the complainant’s claims concerning the Staff Council elections. It denies that any conditions were accepted in return for the withdrawal of the letter of 15 June and notes that the complainant has produced no evidence to support his allegation in this respect.

The Organization accepts no responsibility for the alleged acts of aggression against the complainant. The individuals whom he accuses of committing these acts are not members of the Administration, and the complainant is not under their authority. The incidents in question occurred in the context of the complainant’s Staff Association activities, and not in the exercise of his professional functions. Under these circumstances, they cannot be considered as harassment. WIPO points out that the allegation of physical aggression is not supported by any evidence and that the above-mentioned Deputy Director General did not mention any physical aggression in his contemporaneous report to the Director General. It indicates that because the complainant has challenged the Director General’s decision of 13 December 2005, the inquiry by the Internal Audit and Oversight Division has not yet taken place, but that it remains willing to initiate such an inquiry if the Tribunal considers it appropriate.

WIPO considers that it has no authority to interfere in the internal politics of the Staff Association, nor any interest in doing so. It submits that it is not competent to annul the results of the Staff Council elections, and points out that the complainant’s allegation concerning the lack of neutrality of one of the polling officers is both incorrect and unsubstantiated. It emphasises that the Administration took great care to remain neutral during the weeks leading up to the elections. According to the Organization, it is the prerogative of the Staff Association to cancel the elections that were held on 11 August 2005.

Lastly, WIPO states that there is no evidence to suggest that the Administration is in any way responsible for the deterioration of the complainant’s health.

D. In his rejoinder the complainant asserts that the Administration was complicit in the attempts to destabilise the Staff Council. He contends that staff were encouraged by the Administration to attend the EGA, which accounts for the remarkable attendance level. He also points out that, whilst allowing the co-signatories to use e-mail facilities, the Administration denied a similar request from another group calling itself “the Union”. Moreover, many of the defamatory messages sent by the former President were copied to various members of the Administration, which, according to the complainant, demonstrates a pattern of harassment and intimidation against him.

He develops further arguments regarding the fact that errors of law were made by the Appeal Board which resulted in erroneous conclusions, and submits that an appropriate investigation should have been conducted by an independent body. In his view, it was wrong to refer the matter to the Internal Audit and Oversight Division, a body which he criticises for its lack of independence. He describes the impugned decision as “a negligent failure to act in the face of a series of actions amounting to institutional harassment” and increases his claim for damages to 100,000 dollars. He also asks that the Tribunal make appropriate orders to enable investigation of his allegations by the Swiss authorities.

E. In its surrejoinder the Organization maintains its position, recalling that the principle of non-intervention in the activities of the Staff Council and Staff Association has been clearly recognised by the Tribunal. It notes that the complainant made no mention of a physical assault when he reported the incident of 28 June to the Director General.

CONSIDERATIONS

1. The complainant has been a staff member of WIPO since 1991. He was elected President of the Staff Council in 2001 and held that position until he, along with the remaining members of the Council, resigned in troubled circumstances on 28 June 2005. Two other members of the Council had resigned some days earlier, reducing the number of members below the minimum required by the Statutes of the Staff Association. An election held on 11 August 2005 resulted in a new Council.

2. The circumstances leading to the resignation of the complainant as President of the Staff Council involved a former President who, at relevant times was a senior staff member of WIPO and held a grade D.2 post. Although there had been an earlier exchange of correspondence indicating that the former President did not hold the complainant in high regard, the situation became more problematic in the summer of 2004 with the former President sending a long e-mail to some members of the Staff Council, but not to the complainant, whom he criticised for, among other things, a statement by this Tribunal indicating that he had been consulted by the Administration in relation to a matter that eventually was the subject of Judgment 2288. The former President sent a copy to the Director of HRMD. The complainant then wrote to the latter, asking him to indicate by what authority the former President was using WIPO facilities to send the e-mail in question, to clarify his – the complainant’s – role in the matter which resulted in Judgment 2288 and to protect members of the Staff Council from serious accusations of the kind “proliferated by people like [the former President]”. The complainant received no reply to that request.

3. In May 2005 there was a general meeting of the staff association at which the chairman ruled certain discussions out of order. Another staff member was dissatisfied with the way that meeting was conducted and announced soon afterwards that he was collecting signatures for a petition calling for an extraordinary general assembly (EGA). This led the former President to send an e-mail to several staff members on 20 May, indicating various matters which, in his view, should be the subject of discussion. Again, he sent a copy of the e-mail to the Director of HRMD. On 27 May some members of the Staff Association requested HRMD for facilities to conduct a meeting. On 30 May the then Director of HRMD sent an e-mail to all staff members stating, among other things:

“The meeting referred to in the signatories’ email of May 27, 2005, cannot take place until the Administration has received a request from the Staff Council. Furthermore the email of May 27, 2005, from signatories was not authorized. [...]

Unauthorized general communication may be subject to sanction [...].”

It would seem that “the signatories” were those persons or, at least, some of them, who had signed the petition calling for an EGA and that there were then at least 20 signatories as required by Article 8(2) of the Statutes of the Staff Association. In the meantime, the Staff Council had sought facilities for an information meeting with respect to the petition for an EGA, and another group had requested facilities to publicise their position. Neither request was granted.

4. The former President reacted to the e-mail of 30 May by writing to the Director General on 31 May 2005, requesting him to declare that the communication was “without prejudice to the lawful exercise of the right of association” and, also, that the Staff Council was not representative and thus did not “qualify as an interlocutor for

management under the Staff Regulations and Rules". He also requested that the Director General order the removal of a communication "put on the intranet allegedly by the Staff Association". That same day he sent an e-mail to various staff members informing them of his actions and stating his view that they had an inalienable right to an EGA and that that right could not be satisfied by an information meeting.

5. The position of the Administration seems to have changed overnight with, apparently, a change of the Director of HRMD. On 31 May 2005 the staff member who had announced his intention to seek signatures for a petition for an EGA asked for permission to use WIPO's internal electronic mail system as, according to him, the Staff Council had refused to relay his communications. On 1 June the new Director authorised him to set up a "generic e-mail box", stating that "this exceptional authorization" was for a period of three weeks or "until the Staff Council makes a decision on the issue in question, or immediately after the intended event [...] whichever is the earlier". A copy of the authorisation was forwarded to the complainant, who then informed the Director of HRMD that the Staff Council had not received an official request for the distribution of a general e-mail or for an EGA. He also asked that, in future, the Director discuss matters with the Staff Association representatives before taking action. In any event, an EGA was held on 13 June. According to the record of the meeting, the Assembly voted in favour of a new election for the Staff Council.

6. After the EGA, the complainant sought legal advice. On 15 June his then lawyer wrote to the Director General challenging, amongst other things, the validity of the meeting of 13 June and the resolution to hold new elections. The lawyer also claimed that the Administration had acted illegally in providing facilities to those who had signed the petition and had also interfered with the workings of the Staff Council by way of retaliation for certain of its actions. The letter contained various demands, including that there be a cessation of interference in the operations of the Staff Council and, also, that there be no recognition of any of the resolutions passed at the meeting of 13 June. The lawyer asked that the letter be treated as a request for a final administrative decision with respect to those demands. That letter was subsequently withdrawn. According to the complainant, it was withdrawn subject to conditions that were not met. Later, there were further meetings, including with a Deputy Director General who, according to the complainant, agreed to pay the fees of the complainant's lawyer. That agreement is denied. The complainant agreed at one such meeting that he would resign as President of the Staff Council and, as earlier indicated, he and the remaining members resigned on 28 June 2005.

7. On 28 June 2005, before the complainant's resignation was made public, the person who had initiated the petition for the EGA arrived at the complainant's office with three other persons who had supported the petition. Earlier that day, they had accosted another member of the Staff Council. According to the complainant, the four persons who arrived at his office spoke to him aggressively, one pushed him back into his office when he attempted to leave, and all four followed him into the corridor, questioning him aggressively as to whether he was going to resign as President of the Staff Council. Later that day, the complainant reported the two incidents to the Director General, although he did not then claim that there had been any physical aggression. The Director General requested an investigation of the incidents and received a report on 6 July 2005, confirming that the two incidents had occurred, although not addressing the question whether there had been any physical aggression. Some few days after the incident of 28 June, the complainant proceeded on sick leave and, for various periods, has subsequently been on 100 per cent sick leave.

8. In July 2005 the complainant consulted another lawyer, who wrote to the Director General on 29 July, outlining the events that had happened and asking that sanctions be imposed against the former President of the Staff Council and against three persons who had been closely associated with the petition for an EGA and who, along with one other person, had been involved in the incident in the complainant's office on 28 June. A claim was also made for costs of that "and any related complaint" and, also, for an official apology from the Administration. Additionally, the lawyer requested that "the Administration [...] not recognize the upcoming elections to the Staff Council" which, it was said, had been "illegally organized with the complicity of the Director of HRMD and in contradiction to the Statutes of the Staff Association".

9. The letter of 29 July 2005 was apparently treated as a request for review of an administrative decision. It was said by way of reply that "it [was] not clear what administrative decisions [were] being questioned". It was also said that, with respect to events alleged to have occurred in 2004, or earlier, action had not been taken within the prescribed time. Responsibility was denied for the actions of the former President of the Staff Council and the three persons who had been associated with the petition for an EGA. Finally, WIPO denied any wrongdoing in relation to the Staff Association or the Staff Council. Thereafter, an appeal was filed with the Appeal Board in which the complainant maintained his claims for sanctions, for an apology and for costs. Additionally, he claimed moral

damages, a declaration that the EGA of 13 June 2005 and the subsequent elections of 11 August were null and void, and an order for new elections to be conducted without delay under the supervision of a neutral body.

10. In its report of 25 November 2005 the Appeal Board referred to Staff Regulation 11.1 and said that the only issue which, in its view, could be regarded as an administrative decision was the issue of making communication facilities available to the signatories of the petition for an EGA, but that otherwise the issues were outside the scope of Regulation 11.1. So far as concerns the provision of communication facilities, the Board noted an apparent imbalance resulting from the Administration's failure to respond to the complainant's request for facilities for an information meeting, but considered that the Administration had not acted beyond what was permitted by the case law of this Tribunal. The Board also expressed the view that it was not competent to rule on the validity of the EGA or the subsequent elections for the Staff Council. Lastly, the Board recommended that "the Director General consider the right forum or body within WIPO" to deal with the appeal insofar as it concerned allegations of harassment and physical attacks.

11. By a letter of 13 December 2005 the Director General informed the complainant's lawyer that he had decided to refer the allegations of harassment and physical attacks to the Internal Audit and Oversight Division, but that, in accordance with the recommendation of the Appeal Board, all other claims were denied. It should be noted that, as at the date of filing of WIPO's surrejoinder, namely, 5 February 2007, no investigation had been undertaken as relevant positions in the Internal Audit and Oversight Division had not been filled.

12. The complainant now seeks relief as claimed in his appeal to the Appeal Board, but he has extended his claim for damages to claim 100,000 United States dollars, plus interest, as compensation for moral injury to reputation, including 50,000 dollars for injury to his reputation as President of the Staff Council and 50,000 dollars for injury to his person. In this regard, he points out that he previously reserved his right with respect to future damage. In addition, the complainant asks the Tribunal:

"to make such additional orders as it sees fit to [...] enable a proper investigation by the Swiss authorities of the acts described herein [...]"

13. It is convenient to note at this point that the four persons with respect to whom the complainant seeks the imposition of sanctions have filed applications to intervene in these proceedings and, in the alternative, seek to have their applications treated as complaints. These applications must be refused. So far as concerns the applications to intervene, none of the applicants is in the same position in fact or law as the complainant (see Judgment 2237). Nor can the applications be treated as complaints as they do not challenge a final administrative decision by WIPO in respect of which the applicants have exhausted internal remedies. However, it would be a denial of due process to entertain the claim for the imposition of sanctions without affording those persons an opportunity to be heard. That issue need not be pursued further as the claim for the imposition of sanctions must be rejected. The Tribunal has no jurisdiction to issue injunctions requiring an organisation to sanction staff members (see Judgments 2190 and 2370).

14. The terms of Article II of the Statute of the Tribunal also dictate that various other claims for relief are not receivable. The claim that the Tribunal make appropriate orders to enable investigation of the complainant's allegations by the Swiss authorities falls into this category. The complainant's rights are those that derive from the terms of his appointment, the applicable Staff Regulations and those general legal principles recognised by the Tribunal as applicable to all international civil servants. None of these confer any right on the complainant to rely on Swiss law in his claims against WIPO and, consequently, there is no power in the Tribunal to make any order in that regard.

15. Article II of the Tribunal's Statute also requires that the complainant's claim for annulment of the election of the new Staff Council be dismissed. So too must his claim that a new election be conducted without delay by a neutral body (see Judgment 78). Such rights as the complainant has in relation to the affairs of the Staff Association and the Staff Council derive from the Statutes of the Staff Association. They do not concern the terms of his appointment, the applicable Staff Regulations or those general principles of law applicable to international civil servants.

16. The claims for an apology and for an order that WIPO undertake that neither the complainant nor other members of the Staff Council elected in May 2005 will be the subject of future discrimination, including mobbing, must also be dismissed. By Article VIII of its Statute the Tribunal is empowered to rescind impugned decisions, to

order the performance of obligations and to award compensation. It is not empowered to order apologies. Nor is it empowered to require undertakings as to performance of obligations in the future, as claimed by the complainant.

17. It remains to consider the complainant's claims for damages and for costs. It should be noted that neither the letter of 15 June 2005 from the complainant's first lawyer nor that of 29 July from his subsequent lawyer contained a claim for damages. However, it was not contended before the Appeal Board that the claim then made was not receivable and no such argument is now advanced. Moreover, a claim for damages must be treated as receivable in any case where an obligation can no longer be performed.

18. The claim for damages is apparently based on two distinct obligations: the obligation not to interfere in the freedom of association of staff members which, in turn, involves a duty not to interfere in the internal affairs of their representative bodies; and the duty to provide a safe and secure workplace which, in turn, involves the duty to protect against workplace harassment and aggression. The complainant claims that WIPO was complicit in the destabilisation of the Staff Council; in the alternative, that it failed in its duty of care by negligent omission to take action. Before turning to these arguments, it is necessary to consider the nature of the obligation not to interfere in the freedom of association of staff members.

19. Where, as here, the Staff Regulations provide for the establishment of a Staff Council, they import freedom of association for every staff member (see Judgments 911 and 1542). Accordingly, WIPO's obligations in that regard extended not only to the complainant but, for presently relevant purposes, to the former President and those who were calling for an EGA. It is well settled that freedom of association carries with it freedom of discussion and debate in relation to staff association matters. See Judgment 274, where the nature of the relevant freedom of discussion was explained as follows:

“Activities within the Staff [Association] [...] constitute an area that is ‘prima facie’ outside the Director-General’s jurisdiction. Here again there may be exceptional cases. It is unnecessary for the Tribunal to decide what view it would take of malicious and indefensible slanders spread about other members of the staff [...] whether in the office or outside the office and whether connected or not with the affairs of the Staff Council. But as a general rule [...] staff member[s] [give] no undertaking, express or implied, about how [they] will conduct [themselves] in the business of the Staff Council or its organs.”

The Tribunal also pointed out in that judgment that freedom of discussion, when feelings are strong, can, as in that case, involve “extravagant and even regrettable language”.

20. The complainant relies on several matters to support his contention of complicity, alternatively, negligent omission by the Administration in relation to the destabilisation of the Staff Council. These fall into five broad groups:

- (a) the fact that nothing was done by it in the face of his and the Staff Council's complaints with respect to the tone and subject of communications from the former President;
- (b) communications from the former President to various members of the Administration, including the Director General and the Controller, who had apparently enquired of him as to the Staff Council situation;
- (c) making facilities available to the signatories of the petition calling for an EGA;
- (d) the unusually high attendance at the EGA, including by senior staff members; and
- (e) the various discussions that took place between him and senior officials after receipt of the letter of 15 June 2005 from his lawyer.

21. The communications from the former President to the complainant and other members of the Staff Council were not couched in the diplomatic language that might be expected in official correspondence. They were marked by sarcasm, irony and strong language that the recipients were entitled to regard as offensive. However, they concerned the activities of the Staff Council and there is nothing to suggest that they were malicious, in the sense that they contained knowingly false statements or were sent for a purpose unrelated to the Staff Association. In the main, the communications contained expressions of the former President's opinions, and so long as he honestly held those opinions – and there is nothing to suggest that he did not – he was entitled to express them in strong terms. Accordingly, there was not only no obligation on the part of WIPO to take action in relation to the

communications, but it would have been a breach of the former President's terms of appointment if it had. That being so, its inaction in the face of the complainant's and the Staff Council's requests neither provides evidence of complicity nor supports the claim of negligent omission.

22. Moreover, neither complicity nor negligent omission can be sustained by reason of anything said or done by the former President before 30 May, when the Administration denied facilities to the signatories of the petition for an EGA. By that stage, the Administration must clearly have known that there were serious differences among staff members as to the functioning of the Staff Council and, given the important role played by the latter in the general affairs of WIPO, it had a legitimate interest in being informed as to the situation, not only by the Staff Council itself, but by those who had opposing views. It seems likely that the letter sent by the former President to the Director General on 31 May 2005 was significant in the later decision to make e-mail facilities available to the signatories of the petition for an EGA. However, that is not to say that WIPO was complicit in an attempt, the major moves in which had already been played out, to destabilise the Staff Council.

23. It is necessary, at this stage, to refer to Article 8(2) of the Statutes of the Staff Association, which provides:

“The Assembly shall meet in extraordinary session on convocation by the Staff Council either pursuant to a decision by the latter or at the written request of no fewer than 20 members of the Association. In the latter case, the date set for the session shall not be more than five working days later than that on which the request reached the Council, unless a longer period is indicated in the request, in which case the session shall take place within the time limit thus indicated.”

Although it cannot be said that WIPO had an obligation to provide facilities to those who had signed the petition for an EGA, its actions in that regard promoted freedom of speech, which is the right of all staff members in relation to the affairs of their Staff Association, and, arguably, were in the interest of both the Association and the Organization. Although there is a dispute as to the resolutions that could properly be passed at an EGA, there is no doubt that once the requisite number of signatures had been obtained and presented to the Staff Council, an assembly had to be held and staff members were entitled to put forward their views as to the course that should then be taken. Moreover, it must have been clear to the Organization that there was then serious dissension within the Staff Association, and it was open to it to form the view that it was in the interests of the Organization to facilitate discussion of matters in the hope of restoring stability. Accordingly, the provision of e-mail facilities to those who had signed the petition for an EGA provides no basis for the contentions of the complainant.

24. It is not disputed that there was an unusually high attendance at the EGA, including by persons in senior positions. It may be, as the complainant contends, that the Administration encouraged people to attend the meeting but that, in itself, provides no basis for a conclusion that it was complicit in a campaign to destabilise the Staff Council or to remove the complainant as its President. It is equally probable that, if it did encourage attendance at the assembly, it did so in the hope that that would result in a resolution of the differences within the Staff Association.

25. Further, the subsequent meetings between the complainant and various members of the Administration following the EGA are explicable on the basis that, once there had been a resolution to hold new elections for the Staff Council, it was necessary that steps be taken either to bring about that result or, by means which are not immediately apparent, to restore confidence in the Council as then constituted. The latter course became even more problematic with the resignations that reduced the number of members below the minimum required by the Statutes of the Staff Association.

26. Given the interest of the Organization in having a stable and functioning Staff Council, and given also the demands made in the letter of 15 June 2005 from the complainant's lawyer, it was inevitable that the Administration would wish to be informed of the course proposed by the complainant and would wish to discuss the matters raised in that letter. Indeed, once the complainant had made the demands contained therein, WIPO was entitled to express its view as to the course that should be taken. Moreover, individual staff members, whether or not in senior positions, were also entitled to express their views. It is not clear from the materials to what extent any person was expressing his or her own personal views or the views of the Administration. However, the fact that discussions took place does not indicate complicity in the events that went before. It is convenient to note, in this context, that the materials do not establish, as contended by the complainant, that there was an agreement on the part of the Administration to pay the fees of the lawyer who wrote the letter of 15 June. Indeed, the claim is that the person with whom the relevant discussion was held said that she would personally pay those fees.

27. Whether considered in distinct categories or in the overall context, the matters on which the complainant relies to establish complicity of the Administration in the destabilisation of the Staff Council do not support that conclusion. Nor was there any duty on the part of the Organization to intervene to prevent that situation and, thus, there is no basis for a finding of negligent omission. And because there was no such duty, the claim of “institutionalised harassment” propounded on behalf of the complainant cannot be sustained.

28. Although each and every staff member of WIPO was and is entitled to freedom of association and to freedom of discussion and debate with respect to the affairs of the Staff Association, including the conduct of the Staff Council, that latter freedom does not extend beyond discussion and debate. It does not extend, for example, to intimidation, offensive behaviour or aggression. Moreover, the duty of an international organisation to provide a safe and secure workplace extends to ensuring that such conduct does not occur in relation to Staff Association affairs, at least where, as here, it knows that there are strong feelings between the different protagonists. It follows that the complainant’s claim of aggression in his office on 28 June 2005 was a matter relating to the terms of his appointment and should have been considered by the Appeal Board. Moreover, it was the duty of WIPO, as part of its duty of care, to ensure that his claim was properly and promptly investigated.

29. Although prompt, the report provided to the Director General soon after the events of 28 June 2005 seems to have involved no more than speaking to the persons concerned and, thus, cannot be regarded as the outcome of a thorough investigation. So much is implicit in the Director General’s decision, following receipt of the recommendations of the Appeal Board, to refer the matter to the Internal Audit and Oversight Division. And the investigation by that Division, even if it has now occurred, was not prompt. As the decision to refer the complainant’s claims to the Internal Audit and Oversight Division was based on the Appeal Board’s erroneous belief that those claims were not within the scope of its jurisdiction, the impugned decision must, to that extent, be set aside and the matter returned to the Director General for further consideration, including, if necessary, reference back to the Appeal Board. By reason of the failure of the Organization to ensure a proper and prompt investigation, there should be an award of moral damages in the sum of 5,000 Swiss francs. Because the complainant has had a measure of success, there should be an award of costs in his favour in the sum of 2,000 francs.

DECISION

For the above reasons,

1. The decision of 13 December 2005 is set aside to the extent that it referred the complainant’s claims with respect to the events in his office on 28 June 2005 to the Internal Audit and Oversight Division. Those claims are remitted to the Director General for fresh consideration, including, if necessary, by the WIPO Appeal Board.
2. WIPO shall pay the complainant 5,000 Swiss francs by way of moral damages for its failure to properly and promptly investigate the events in his office on 28 June 2005.
3. It shall pay him 2,000 francs in costs.
4. The complaint is otherwise dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 10 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Agustín Gordillo

