

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Le Greffe

The Registry

## **Administrative Instruction ICC/AI/2008/001**

Date: 5 February 2008

### **Disciplinary Procedures**

Pursuant to Staff Rule 110.4 (f), the Registrar in consultation with the Prosecutor, recognising the right of every staff member to be treated with fairness and respecting their due process rights, in accordance with Staff Regulations 1.2, 10.1 and 10.2; and Chapter X of the Staff Rules, promulgates the following:

#### Section 1

##### Purpose

- 1.1 The purpose of the present administrative instruction is to establish further rules on the application of Chapter X of the Staff Rules of the International Criminal Court ("the Court") and to outline the basic requirements of due process to be afforded a staff member against whom unsatisfactory conduct is alleged.

#### Section 2

##### **Preliminary Investigation and Fact-Finding**

- 2.1 Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the Registrar or the Prosecutor, as appropriate, shall initiate a preliminary investigation. If necessary, the Registrar or the Prosecutor, as appropriate, shall have the authority to request the relevant supervisors, Heads of Section and/or Division Directors, of the full account of the facts which may be investigated and all the measures that they have undertaken in order to prevent and/or minimize the consequences of the alleged conduct. The Registrar or the Prosecutor, as appropriate, may instruct appropriate and experienced staff to conduct such preliminary investigation. The staff who may conduct the preliminary investigation shall respect the due process rights of the staff member who is under investigation and provide him/her with reasonable time which shall not exceed 10 working days to provide his/her version of the facts and evidence, if any.

- 2.2 Unsatisfactory conduct is defined in Staff Rule 110.1 as “Failure by a staff member to act in accordance with any official document of the Court governing rights and obligations of staff members, such as the Staff Regulations and Rules and the Financial Regulations and Rules, or any relevant resolutions and decisions of the Assembly of States Parties, or failure to observe the standards of conduct expected of an international civil servant”. Unsatisfactory conduct for which disciplinary measures may be imposed includes, but is not limited to:
- (a) Acts or omissions in conflict with the general obligations of staff members set forth in Article 1 of the Staff Regulations and the rules and instructions implementing it;
  - (b) Unlawful acts (e.g. theft, fraud, possession or sale of illegal substances, smuggling) on or off the Court premises, and whether or not the staff member was officially on duty at the time when the act was committed;
  - (c) Misrepresentation or false certification in connection with any Court’s claim or benefit, including failure to disclose a fact material to that claim or benefit;
  - (d) Assault upon or threats to other staff members;
  - (e) Sexual and other forms of harassment, as defined under Section 2 of administrative instruction ICC/AI/2005/005;
  - (f) Discrimination, as defined under Section 2 of administrative instruction ICC/AI/2005/006;
  - (g) Misuse of office equipment, files, electronic files, documents or any asset of the Court;
  - (h) Abuse of authority, breach of confidentiality, abuse of the Court’s privileges and immunities;
  - (i) Acts or behaviour that may discredit the Court.
- 2.3 A preliminary outcome of the investigation consisting of a full account of the facts that are known together with documentary evidence, such as cheques, invoices, administrative forms, signed written statements by witnesses or any other document or record relevant to the alleged misconduct shall be submitted to the Registrar or the Prosecutor, as appropriate, within 5 working days from the date when the preliminary investigation was instructed.
- 2.4 If the unsatisfactory conduct appears to be of such a nature and of such gravity that immediate suspension may be warranted, the preliminary investigation report shall make a recommendation to that effect, giving reasons. As a general principle, suspension may be contemplated if the conduct in question may pose a danger to other staff members or to the Court, or if the conduct is of such a nature to discredit and harm the reputation of the Court, or if there is a risk of evidence being destroyed or concealed. In accordance with Staff Rule 110.5 (a) the suspension may normally not exceed three months, it shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.
- 2.5 On the basis of the preliminary investigation report and the evidence presented, the Registrar or the Prosecutor, as appropriate, shall decide, within 10 working days from the date of submission of the preliminary investigation report, whether the matter should be pursued, and, if so, whether suspension is warranted. Suspension under Staff Rule 110.5 (a) is normally with pay, unless the Registrar or the Prosecutor, as appropriate, decides that exceptional circumstances warrant suspension without pay, in both cases without prejudice to the staff member’s rights.
- 2.6 If the case is to be pursued, the Registrar or the Prosecutor, as appropriate, shall:
- (a) Inform the staff member in writing of the allegations and his or her right to respond;
  - (b) Provide him or her with a copy of the documentary evidence of the alleged misconduct;
  - (c) Notify the staff member of his or her right to be represented or assisted by a staff member or a former staff member of his or her choosing in accordance with Staff Rule 110.2 (d).

- 2.7. If the Registrar or the Prosecutor, as appropriate, authorizes suspension, the staff member shall be informed of the reason or reasons for the suspension and its probable duration and shall immediately surrender his or her ICC badge. A staff member on suspension may not enter the Court premises without first requesting permission and shall be afforded the opportunity to enter, under escort, if necessary to prepare his or her defence or for any other valid reason.
- 2.8 The staff member shall be given 10 working days to answer the allegations and produce countervailing evidence, if any. This time-limit however may be extended taking into account the seriousness and complexity of the case. If more time is required, it may be granted upon the request of the staff member concerned, giving cogent reasons why he or she is unable to comply with the deadline. If no response or request to extend the deadline is submitted within the time-limit, the case shall nevertheless proceed.
- 2.9 On the basis of the entire dossier, the Registrar or the Prosecutor, as appropriate, shall proceed within 10 working days from the date of receipt of the staff member reply as follows:
- (a) Decide that the case shall be closed, and the staff member shall be immediately notified that the charges have been dropped and that no further action will be taken; or
  - (b) If the facts appear to indicate that misconduct has occurred, refer the matter to the Disciplinary Advisory Board for advice; or
  - (c) If the evidence clearly indicates that unsatisfactory conduct has occurred, and that the seriousness of the unsatisfactory conduct warrants immediate separation from service, decide that the staff member concerned be summarily dismissed.
  - (d) In accordance with Section 7 of Administrative Instruction ICC/AI/2005/005 on "Sexual and other forms of harassment", as well as Section 6 of Administrative Instruction ICC/AI/2005/006 on "Equal employment opportunity and treatment", the Registrar or the Prosecutor, as appropriate, shall transmit a formal complaint to the Disciplinary Advisory Board without a preliminary investigation being conducted.

### Section 3

#### Referral to the Disciplinary Advisory Board

- 3.1 Staff Rule 110.2 (b) provides for referral of a case to the Disciplinary Advisory Board for advice as to what disciplinary measures, if any, would be appropriate. If the Registrar or the Prosecutor, as appropriate, decides to refer the case to the Disciplinary Advisory Board, he or she shall inform the staff member in writing of his/her decision within 3 working days from the date when the case was referred to the Disciplinary Advisory Board.
- 3.2 Referral to the Disciplinary Advisory Board may be waived, by mutual agreement of the staff member concerned and the Registrar or the Prosecutor, as appropriate, under the provisions of Staff Rule 110.2 (b) (i). A waiver means that the staff member agrees to forego Disciplinary Advisory Board proceedings and to have imposed one or more of the disciplinary measures listed in Staff Rule 110.6 (a). Either the staff member concerned or an official acting on behalf of the Registrar or the Prosecutor, as appropriate, may propose a waiver. If there is mutual agreement on the waiver, it shall be recorded in writing.
- 3.3 If there is no waiver of referral to the Disciplinary Advisory Board, and in accordance with Staff Rule 110.3 (l) if, in the opinion of the Registrar or the Prosecutor, as appropriate, consideration

of the case involves sensitive matters specific to one organ, he or she may require, on an exceptional basis, the Chairperson of the Disciplinary Advisory Board to constitute a Disciplinary Advisory Board composed solely of members who are staff members of the organ concerned. Otherwise, if the case does not involve sensitive matters specific to one organ, the Registrar or the Prosecutor, as appropriate, shall immediately, and in any case no later than 5 working days after receipt of the staff member's reply, if any; or, if no reply is received, after 10 working days of the date when the staff member was informed of the allegations of unsatisfactory conduct against him or her, refer the case to the Disciplinary Advisory Board through its Secretary.

3.4 The Secretary of the Disciplinary Advisory Board shall upon receipt of the referral:

- (a) Inform the staff member immediately of the composition of the panel of the Disciplinary Advisory Board that may consider or review his/her case;
- (b) Transmit to the staff member a copy of the entire dossier submitted to the Disciplinary Advisory Board;
- (c) Advise the staff member of his or her right to be represented or assisted by a staff member or a former staff member of his/her choosing in accordance with Staff Rule 110.2 (d) ;
- (d) Advise the staff member of his or her right to submit any written observation to the Disciplinary Advisory Board within 10 working days of receipt of the documentation sent by the Secretary.

3.5 If no nominations are submitted in accordance with Staff Rule 110.3 (b) (iii) within reasonable time, the Registrar or the Prosecutor, as appropriate, may make appointments after consultation with the Staff Union Council.

#### Section 4

##### Proceedings before the Disciplinary Advisory Board

4.1 Pursuant to Staff Rule 110.4 (b), in considering a case, the Disciplinary Advisory Board shall act with maximum dispatch and shall provide its advice to the Registrar or the Prosecutor, as appropriate, normally within thirty calendar days of the case being referred by the Registrar or the Prosecutor, as appropriate, to the Disciplinary Advisory Board.

4.2 The proceedings of the Disciplinary Advisory Board and its rules of procedure shall be consistent with due process, the fundamental requirements of which are that the staff member concerned has the right to know the allegations against him or her; the right to see or hear the evidence against him or her; the right to rebut the allegations and the right to present countervailing evidence and any mitigating factors. Staff members are required to be acquainted with the Rules of Procedure of the Disciplinary Advisory Board, as promulgated under Information Circular ICC/INF/2007/003 dated 7 May 2007.

4.3 The Disciplinary Advisory Board shall submit its report to the Registrar or the Prosecutor, as appropriate, in accordance with Staff Rule 110.4 (e) and its Rules of Procedure.

## Section 5

### Report

5.1 The report of the Panel of the Disciplinary Advisory Board shall contain:

- (a) The charges and allegations of unsatisfactory conduct;
- (b) A summary of the staff member's response to the allegations and to the disciplinary referral, if any;
- (c) A statement of the proceedings;
- (d) The findings, indicating which of the charges and allegations, if any, appear to be supported by evidence and the Panel's evaluation thereof;
- (e) Any aggravating or mitigating factors that may be relevant;
- (f) Conclusions on the above;
- (g) Recommendation(s) from the Panel of the Disciplinary Advisory Board to the Registrar or the Prosecutor, as appropriate, as to what disciplinary measure, if any, may be applied;
- (h) A record of the votes on the advice, including any dissenting or separate opinion.

5.2 The Secretary shall transmit with maximum dispatch to the Registrar or the Prosecutor, as appropriate, the report together with the complete dossier of the case for final decision.

5.3 The Secretary shall also notify the staff member concerned or former staff member of the date on which the panel's report was transmitted to the Registrar or the Prosecutor, as appropriate, for final decision, in accordance with Rule 14 (d) of the Rules of Procedure.

## Section 6

### Final Decision

6.1 The final decision shall be taken by the Registrar or the Prosecutor, as appropriate, within one month of the date of the submission of the report by the Secretary of the Disciplinary Advisory Board.

6.2 A staff member who is summarily dismissed under the terms of Staff Regulation 10.2 (b) and Staff Rule 110.2 (b) (ii) may, within sixty days of receiving written notification of the decision, request that such decision be reviewed by the Disciplinary Advisory Board.

6.3 Upon receipt of the report of the Disciplinary Advisory Board regarding the request of review of the summary dismissal, the Registrar or the Prosecutor, as appropriate, shall, within one month of receipt of the report, decide what action to take in respect thereof.

6.4 If there is an appeal in respect of a disciplinary decision or a disciplinary measure imposed after consideration by the Disciplinary Advisory Board, it shall be submitted directly to the Administrative Tribunal of the International Labour Organisation (ILOAT) in accordance with Staff Rule 110.8.

6.5 Neither a request for review under Staff Rule 110.2 (c) nor an appeal to the ILOAT against a disciplinary decision shall have the effect of suspending such decision.

Section 7

**Final Provisions**

7.1 This Administrative Instruction shall enter into force on the 5<sup>th</sup> day of February 2008.

A handwritten signature in black ink, appearing to read 'Bruno Cathala', written in a cursive style.

**Bruno Cathala**  
**Registrar**