

The Administrative Tribunal,

Considering the complaint filed by Mr C.I. against the International Telecommunication Union (ITU) on 15 November 2004, the ITU's reply of 11 February 2005, the complainant's rejoinder of 18 March, and the Union's surrejoinder of 20 May 2005;

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

Having examined the written submissions;

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

A. The complainant, a German national born in 1946, is a former staff member of the ITU. He entered the service of the Union on 26 October 2002 under a two-year fixed-term appointment as Executive Manager, TELECOM, at grade D.1.

The ITU produces a memorandum dated 12 December 2002, addressed to the complainant, in which the Secretary-General expressed criticism of the complainant's behaviour at a TELECOM event in Hong Kong. By Service Order No. 03/07 of 20 February 2003 the Secretary-General announced that there would be a temporary reorganisation of ITU TELECOM. By a decision dated 3 March 2003 the complainant was "provisionally" assigned to a post of Advisor to the Secretary-General, with effect from 20 February 2003 until further notice. A management review which had commenced on 28 February was completed on 12 March. A report was then produced and sent to the Secretary-General on 13 March, and the complainant later received an extract of it. The Chief of the Personnel and Social Protection Department wrote to the complainant on 24 July 2003 informing him on the Secretary-General's behalf of the intention to terminate his fixed-term appointment before its normal expiry date, in the interests of the organisation. The Joint Advisory Committee was consulted on the matter. It sent a recommendation to the Secretary-General on 8 October.

By a memorandum of 31 October 2003, the complainant was informed that the salary increment due to him on 1 November 2003 was being withheld. By another, dated 14 November 2003, the complainant was informed that the Joint Advisory Committee "did not recommend [returning him] to the post of Executive Manager, TELECOM" and that the Secretary-General had therefore decided not to reinstate him in that post and, until further notice, was confirming his assignment as Advisor.

The ITU issued a vacancy notice for the position of Executive Manager, TELECOM on 24 November. The Secretary-General wrote to the complainant on 4 December informing him that the post was being advertised. He reminded the complainant that the post of Executive Manager, TELECOM, was financing the post of Advisor to the Secretary-General, adding that when the former was filled, it would no longer be possible to finance the post of Advisor. The Secretary-General also told the complainant that, if no other suitable post could be found, he would receive notice of termination. The complainant applied for the post, but was not shortlisted. On 8 December he asked the Secretary-General to review the decision to advertise the post as well as the intention to terminate his appointment. The Secretary-General replied on 19 December 2003, rejecting the complainant's request for review.

By another letter of 19 December 2003 the Secretary-General announced that the selected candidate would take up his duties as Executive Manager, TELECOM with effect from 19 January 2004. He informed the complainant that "the current budgetary situation of the Union [did] not permit the financing of both the position of Executive Manager, TELECOM and the post of advisor", and that he had consequently decided to terminate the complainant's appointment in accordance with Staff Regulation 9.1a)2). The complainant left the employ of the ITU on 4 February 2004.

In correspondence with the Secretary-General the complainant had sought reconsideration of various actions. Those decisions having been maintained, on 2 April 2004 he filed an appeal with the Appeal Board, challenging the decision of 14 November 2003 which confirmed his assignment as Advisor; the decision of 31 October 2003 to withhold the salary increment due on 1 November 2003; the decision to advertise the post of Executive Manager, notified to him on 4 December 2003; and that of 19 December 2003, notifying him of the termination of his employment. In its report, issued on 1 July 2004, the Appeal Board found that certain of the organisation's actions amounted to disciplinary action and that applicable rules had not been followed. It recommended that an amicable solution be found. The Secretary-General did not endorse that recommendation and confirmed the four decisions challenged by the complainant. The acting Chief of the Personnel and Social Protection Department notified that decision to the complainant by a letter of 30 August 2004, which constitutes the impugned decision.

B. The complainant points out that when he first took up his duties as Executive Manager, he discovered financial irregularities and requested an internal audit and a reform of the organisational structure of TELECOM. Subsequently, the ITU Administration's attitude towards him became hostile and it took action to terminate his employment.

The complaint is directed against the decisions confirmed in the letter of 30 August 2004, namely the decision of 3 March 2003 to reassign him provisionally as Advisor, the one of 31 October not to grant his salary increment, the one of 14 November refusing his reinstatement as Executive Manager and confirming his reassignment as Advisor, and that of 19 December 2003 terminating his employment. He alleges misuse of authority, contending that the decisions in question were taken without a valid reason and infringed the Staff Regulations and Rules as well as relevant Service Orders; they were also taken in disregard of the principle of good faith. He believes that there were procedural violations. For one thing, he asserts that the management review report formed the basis of all the decisions taken against him and that he should have received a copy of it in full, instead of only receiving an extract. It was based on hearsay evidence and contained statements made by other staff members to which he was not given any opportunity to respond. He also considers that he should have been given a copy of the Joint Advisory Committee's report.

He contends that there was no legal basis for the decision to reassign him as Advisor. He was transferred to a non-existent and unfunded position where he had no meaningful work. It happened without any warning, while an investigation was under way, and clearly constituted a disciplinary measure. In this regard, he submits that the ITU denied him his fundamental right to be heard. He believes that the decision to withhold his salary increment was also a disciplinary measure. He submits that he never received any formal warning that his performance was unsatisfactory and no performance report was prepared.

As concerns the decision of 14 November 2003 denying him reinstatement as Executive Manager, he submits that there were no substantive grounds for that decision and legally he still holds that post. Nor, in his opinion, was there any legal basis for the decision of 19 December to terminate his appointment. Moreover, the reason given for his termination evolved over time, with three different ones being given.

The complainant seeks the quashing of the decisions issued on 3 March, 31 October, 14 November and 19 December 2003 respectively. He wants the ITU to make various declarations to the effect that it failed in its obligations and duty towards him. He wants it to declare that he "still holds" the position of Executive Manager, or else that he held that position until 25 October 2004. Alternatively, he seeks reinstatement in that position. He claims his "full salary including increments" until 25 October 2006, or alternatively until 25 October 2004. He also claims interest on amounts due. In respect of damage to his career, he claims payment of his salary including increments until his retirement age of 65. He seeks an amount of not less than 20,000 francs in moral damages, as well as his legal costs.

C. The ITU contests the receivability of the complaint insofar as it concerns the decision of 3 March 2003 to reassign him. It states that that decision was never the subject of an internal appeal, and that the complainant has thus not exhausted the internal means of redress.

On the merits, it submits that the complainant's right to be heard was respected. He was heard on three occasions during the management review that took place, and documents he submitted were duly taken into consideration. He was not given the management review report in its entirety because it contained certain confidential elements of no relevance to him. Although the complainant was never sent a copy of the report of the Joint Advisory Committee, he was invited to submit comments to the Committee and did so on 30 July 2003. It adds that the Staff Regulations

do not confer on the complainant any right of access to the report of an internal review board.

The defendant organisation insists on the non-disciplinary nature of the decision to reassign the complainant as Advisor. It was a temporary measure, and was justified in order to calm tensions that had arisen within TELECOM. It was a discretionary decision, taken to ensure the smooth functioning of a department. Contrary to what the complainant infers, the Secretary-General informed him orally and in writing of the grievances against him. He was also fully aware of the tasks entrusted to him in his new position as he was provided with a description of duties upon his reassignment. The Union explains that the post of Advisor was a “reactivated” one that had existed since 1995, although it had no funding of its own; in the complainant’s case funding was obtained from the post of Executive Manager, TELECOM. Furthermore, it argues that the decision to withhold the complainant’s salary increment did not constitute a disciplinary measure. The decision was validly taken, and complied with Staff Rule 3.4.1.

The ITU points out that the decision of 14 November confirming his reassignment was taken on the basis of the report of the Joint Advisory Committee, which recommended not reassigning the complainant to the post of Executive Manager. As regards the decision to terminate his employment, it submits that it amply substantiated the decision and complied with the statutory requirement to consult the Joint Advisory Committee; it does not agree that it gave different legal bases for that decision over time.

D. In his rejoinder the complainant notes that the ITU has not produced the documents he requested.

On the issue of receivability, he says that although his statement of appeal did not specifically mention the decision of 3 March 2003, it was referred to in the letter of 30 August, notifying him of the Secretary-General’s final decision. It was clear from that letter that the Appeal Board considered it to be at issue. In any event, the complainant argues, the decision of 3 March constituted a provisional decision that was only confirmed on 14 November 2003, and so both decisions needed to be considered jointly.

E. In its surrejoinder the defendant organisation reiterates its arguments. It maintains its position regarding the receivability of the decision of 3 March 2003.

CONSIDERATIONS

1. The complainant was appointed by the ITU to the post of Executive Manager, TELECOM, at grade D.1, with effect from 26 October 2002. He was appointed for a fixed term of two years. By decision dated 19 December 2003, his contract was terminated prior to its expiry. Earlier, on 3 March 2003, the complainant had been “provisionally” assigned until further notice as Advisor to the Secretary-General. That assignment was confirmed on 14 November and, a little later, the post of Executive Manager, TELECOM, was advertised as vacant. Although the complainant applied for the post, another person was appointed with effect from 19 January 2004. The reason given for the early termination of the complainant’s contract was that “the current budgetary situation [did] not permit the financing of both the position of Executive Manager, TELECOM, and the post of advisor to which [he had been] assigned”. In the meantime, a decision was taken on 31 October 2003 to withhold the complainant’s annual salary increment.

2. There was correspondence between the complainant and the Secretary-General in which the complainant contested the validity of the various actions set out above. He contended that he still held the post of Executive Manager, TELECOM, and sought reconsideration of various decisions. His requests for reconsideration were rejected and the complainant then appealed to the ITU Appeal Board.

3. In his appeal, the complainant specified four decisions as the subject of that appeal, namely:

- the decision of 14 November 2003 not to reinstate him as Executive Manager, TELECOM;
- the decision of 31 October 2003 not to grant him the salary increment that was due;
- the “decision” of 4 December 2003 to advertise the post of Executive Manager, TELECOM; and
- the decision of 19 December 2003 to terminate his contract of employment.

4. Although it was not specified as a decision against which the complainant had appealed, the Appeal Board took the view that the decision of 3 March 2003 to assign him provisionally to the post of Advisor to the Secretary-General amounted to suspension from his post as Executive Manager, TELECOM. That, according to the Appeal Board, could only be effected conformably with ITU Staff Rule 10.1.3, concerning provisional suspension from duty. It also took the view that the decision of 14 November which confirmed his assignment as Advisor and refused his reinstatement in the post to which he had initially been appointed also constituted a suspension and did not conform with the applicable rules. It considered that the withholding of the complainant's annual increment amounted to a disciplinary measure, in respect of which he was denied an opportunity to present a defence. Lastly, it took the view that the decision to terminate the complainant's appointment was not authorised by Staff Regulation 9.1a)2). Accordingly, the Appeal Board recommended that the Secretary-General seek an amicable solution with the complainant. That recommendation was rejected and the complainant was so informed by letter of 30 August 2004. That decision is the subject of the complaint.

5. The complainant now seeks to have the decisions of 3 March 2003, 31 October 2003, 14 November 2003 and 19 December 2003 quashed. Additionally, he seeks various declarations. He wants the ITU to declare that he "still holds" the position of Executive Manager, TELECOM, or, in the alternative, seeks reinstatement in that position. He seeks material and moral damages. He also asks for an oral hearing to present evidence.

6. The ITU contends that, so far as the complaint concerns the decision of 3 March 2003, it is irreceivable. In this regard, it submits that the complainant did not exhaust internal remedies and correctly points out that that decision was not identified as a subject of the appeal to the Appeal Board. On the other hand, the complainant argues that since that decision was dealt with by the Appeal Board without any objection from the ITU, the organisation is now estopped from raising the question of receivability. Although the decision of 3 March 2003 was not the subject of the appeal, it was and remains directly relevant to the reason for subsequent actions and decisions relating to the complainant and must be considered.

7. As the decision of 3 March 2003 is directly relevant to subsequent decisions, it is convenient to begin with the matters leading up to that earlier decision. When the complainant took up his post in October 2002, the position within TELECOM was far from satisfactory. In December, there was an event in Hong Kong which, it seems, was the first occasion on which the complainant had an opportunity to speak at any length with the Secretary-General concerning the problems in TELECOM. He then told the Secretary-General that there appeared to be financial irregularities and asked him to order an internal audit. This request was not well received. Shortly afterwards, the Secretary-General sent a memorandum to the complainant, criticising various aspects of his behaviour in Hong Kong and informing him that the memorandum would be placed on his personnel file. One of the matters raised concerned statements favouring Bangkok as the venue for the next TELECOM event, rather than Korea. The complainant did not then contest the matters raised in the memorandum, although he now disputes many of them.

8. In January 2003, the Secretary-General requested the Chief of the Personnel and Social Protection Department to interview three of the four directors who were subordinate to the complainant. The complainant was not informed of this request or of the subsequent interviews. The Chief of Personnel, in a memorandum of 23 January 2003, reported to the Secretary-General that he had conducted the interviews and that those interviewed were of the view that there was a need for strong management within TELECOM. He also reported that they considered that the complainant should be given a chance to prove himself and that "it was too early to judge whether he could [...] deliver". According to the memorandum in question, they also said that the complainant would need "clear support from top management" to break through informal structures and personal agendas that had previously been allowed to develop. The general tenor of the memorandum, which was not provided in full to the complainant, clearly indicates that the possibility of removing him from his post was raised with those interviewed.

9. At or about the same time as the Secretary-General requested that the three directors be interviewed, the complainant raised with one of the directors questions as to his, the director's, work performance. The complainant discussed the problem with the Chief of Personnel and sent a number of memoranda to the person concerned, with copies to the Secretary-General. On 17 February 2003 the complainant recommended the early termination of the director's contract on the ground of his unsatisfactory performance. The next day, the Secretary-General wrote to the complainant referring to the memoranda sent to the director whose performance had been criticised, although not specifically referring to the recommendation to terminate the director's contract. He instructed the complainant to "stop these voluminous exchanges of correspondence" and told him that it was his responsibility "to manage [his] staff properly, not by writing this kind of papers".

10. On 20 February 2003 the complainant was informed by the Secretary-General that he was to be immediately assigned to the post of Advisor and that his reinstatement in the post of Executive Manager, TELECOM, would depend on a management review to be conducted by the Chief of the Personnel and Social Protection Department. The next day, the Secretary-General attended a meeting at which many of the TELECOM staff were present and announced that a management review would be conducted and that, pending its conclusion, the complainant would be provisionally assigned to the advisory position. The complainant was required to take the minutes of the meeting. On 24 February he was asked to move office and his name was removed from the TELECOM website. The removal of his name from the website quickly came to the attention of a number of people in the telecommunications industry. A decision giving effect to the complainant's "provisional" assignment to the post of Advisor to the Secretary-General was issued on 3 March 2003. The decision also specified the duties of the post.

11. As part of the management review, many but not all staff members of TELECOM were interviewed by the Chief of Personnel and his assistant. Those interviewed were asked to keep the questions and their answers confidential. A number of the questions related directly to the complainant. For example, those interviewed were asked to rate his performance and to describe his management style and personality. The complainant, who was interviewed on three occasions about the general situation in TELECOM, was not present when the other interviews took place. It was said in the subsequent report of 13 March 2003 that those interviewed had said that the complainant had created "divisiveness", that he lacked "the right management skills" and that it was too soon for him to judge the performance of the director whose early termination he had recommended. It was concluded that the complainant could not "return to the position of Executive Manager". On 15 April the complainant was given an extract of the review report, not a full copy. He was later informed that confidential material relating to other persons had been deleted.

12. After the management review report was provided to the Secretary-General but before the extract was provided to the complainant, the Secretary-General requested the Chief of Personnel to investigate whether the complainant had instructed staff members to speak to exhibitors at the Hong Kong event in favour of Bangkok as the venue for the next TELECOM event. The complainant was not informed of this development and interviews were again conducted without his being present. As it happened, the Chief of Personnel advised the Secretary-General in a memorandum dated 9 April 2003 that it should be concluded that the complainant did not influence staff to speak in favour of Bangkok, and recommended not pursuing the matter further.

13. On 23 April the complainant was informed in writing that the Secretary-General had decided not to retain him until the end of his contract and that he could either opt for separation from service in mutual agreement or, failing agreement, his contract would be terminated. The complainant did not respond to this and, on 24 July, he was informed by letter that, subject to the advice of the Joint Advisory Committee, it was intended to terminate his contract "in the interest of the organization". Attached to the letter was a memorandum to the Chairman of the Committee setting out the history of events and proposing that it was in the interest of the ITU to terminate the complainant's contract because of the incidents in Hong Kong, the facts revealed by the review and the fact that the complainant spent most of his time "levying allegations and accusations" against a particular staff member instead of attending to matters raised with him by the Secretary-General, and because of his failure to take any initiative to perform his job as Advisor. It was also said that the complainant lacked adequate qualifications for the post of Executive Manager. The complainant was invited to submit his observations to the Committee within seven days.

14. The complainant submitted his observations to the Joint Advisory Committee within the specified time, concentrating on the legality of his proposed early termination and asking, if the Committee did not agree with his submissions in that regard, for extra time within which to answer the matters raised against him. So far as concerns the legality of the proposed early termination of his contract, the complainant pointed out that Staff Regulation 9.1 permitted that course on only three grounds, namely:

- if the necessities of the service required the abolition of his post or the reduction of staff;
- if, for reasons of health, he was incapacitated for further work; and
- if his services or conduct had proved to be unsatisfactory.

15. The Joint Advisory Committee requested further information from the Secretary-General as to "the legal and statutory basis" of his proposed course of action. In response, in a memorandum of 29 August 2003, the Secretary-General stated that the complainant's "performance and conduct [...] as established by the [m]anagement

review” were inconsistent with the standards of conduct required of international civil servants. This, he said, had led him to conclude that the complainant could not be reinstated as Executive Manager. He added that the budgetary situation did not allow funding of that post and the post of Advisor.

16. The Joint Advisory Committee did not invite the complainant to respond to the matters raised against him. It must be presumed, therefore, that it made its recommendation on the basis of the legality of the proposed early termination of the complainant’s contract. Its recommendation was that “every effort should be made to maintain [the complainant] in his current position as Advisor, or to assign him to another suitable vacant position until the expiry date of his current fixed-term appointment”. Clearly, that was a recommendation against early termination. However, the Secretary-General, who did not provide a copy of the Committee’s report to the complainant, informed him on 14 November 2003 that the Committee “did not recommend to return [him] to the post of Executive Manager, TELECOM”. That was a misrepresentation of the Committee’s recommendation. In this regard it may be noted, firstly, that the question of reinstatement had not been referred to the Committee, as the Secretary-General had informed it that he could not reinstate the complainant in his post. Secondly, despite his earlier request, the complainant had not been asked to answer any of the matters raised against him in the memorandum which referred the question of his early termination to the Committee; nor had he been able to respond to the subsequent memorandum in which the Secretary-General raised the issue of conduct inconsistent with the standards required of international civil servants.

17. In the memorandum of 14 November the complainant was informed that his assignment as Advisor to the Secretary-General, until further notice, was confirmed. The only reason given for the decision was that the Joint Advisory Committee had not recommended his reinstatement. As the Committee had no occasion to consider that issue, the decision of 14 November cannot, in law, be based on the Committee’s failure to recommend reinstatement. Moreover, the decision cannot be supported on the basis that the complainant’s “performance and conduct” were inconsistent with the standards required of international civil servants, as put in the Secretary-General’s memorandum of 29 August 2003 to the Joint Advisory Committee. The complainant was never given any opportunity to be heard on that issue and, thus, it cannot now be advanced as justification for the decision.

18. The decision to advertise the complainant’s post of Executive Manager, TELECOM, which was notified to the complainant on 4 December 2003, was in substance a decision to dismiss him from that post. No reason was ever provided for that decision and the issue is not addressed in the ITU’s reply or in its surrejoinder. The complainant’s request for review of the decision was rejected on the ground that he had not provided justification or argument for the review. In the circumstances, it must be concluded that the decision resulted from the management review. In this regard, it is necessary only to observe that that review involved a denial of due process in that the complainant was not told precisely who had criticised his performance or conduct, nor was he told exactly what they had said. Moreover, he was not given an opportunity to question them or to rebut what was put against him. The decision to dismiss him from his post thus involved a serious breach of the requirements of due process. In this regard, it is disingenuous to say, as the Secretary-General did in reply to the complainant’s request to be heard in relation to the procedures, findings and conclusions in the management review report, that he had been heard three times. The three occasions in question were those on which the complainant was interviewed as to the situation in TELECOM as part of the management review process.

19. Although the decision of 19 December 2003 to terminate the complainant’s contract was, according to the letter of termination, based on budgetary constraints, the ITU no longer attempts to justify the decision on that basis. Doubtless that is because, as the complainant rightly pointed out in his observations to the Joint Advisory Committee, Staff Regulation 9.1a) does not permit early termination on that ground. Rather, the ITU now contends in its pleadings that the legal basis of the decision was “Staff Regulation 9.1a)2), namely termination [...] on account of unsatisfactory services and conduct”. It also contends that the decision was taken “due to the necessities of the service”. Somewhat paradoxically, the ITU attempts to answer the complainant’s contention that dismissal for unsatisfactory services or conduct must be preceded by a warning by stating a little further in its pleadings that “it was not on that legal basis that his contract was terminated”.

20. Given the different bases on which the ITU has attempted to justify the different decisions it took – namely its decisions to terminate the complainant’s contract before its expiry and not to reinstate him as Executive Manager, and then to dismiss him from that post and, finally, to terminate his contract – it can only be concluded that those decisions were based on the result of the management review which was ordered by the Secretary-General. As already noted, that review involved a denial of due process. Moreover, given the earlier review when staff members were interviewed in January 2003 – the report of 23 January being explicable only on the basis that

the possibility of removing the complainant from his post was canvassed with those interviewed – and given the public announcement in March 2003 of the complainant’s assignment as Advisor, it is difficult to imagine a process that could have been better calculated to humiliate him, destroy his authority in the eyes of those whom he was appointed to supervise and thus render it impossible for him to return to his post. When it is also considered that the reason for the decision not to reinstate the complainant was based on a misrepresentation, that no reason was ever provided for the decision to dismiss him from his post and that different grounds were given at different times for the decision to terminate his contract, it is impossible to escape the conclusion that, in respect of the decisions mentioned above, there was a degree of personal animosity on the part of the Secretary-General that led him to act in consistent violation of the complainant’s rights.

21. It is necessary now to turn to the decision of 31 October 2003 to deny the complainant an annual salary increment. That decision was taken on 23 October and communicated on that day to the Chief of Personnel. On 31 October it was communicated to the complainant by the Chief of Personnel. Seemingly, this course was taken in purported compliance with Service Order 01/02 which, as from 1 March 2001, eliminated the need for performance appraisal reports in relation to the granting or withholding of annual increments. Pursuant to Staff Regulation 3.4 salary increments are awarded annually “on the basis of satisfactory service” which, under Rule 3.4.1, is defined “unless otherwise decided by the Secretary-General in any particular case” as “satisfactory performance and conduct [...] as evaluated by [a staff member’s] supervisors”. The procedure laid down in the Service Order requires the supervisor to inform the Personnel Department in writing of the reasons why the performance and conduct have not been satisfactory, at least one week before the beginning of the month in which the increment is due. The Personnel Department is to provide a copy of the memorandum to the staff member concerned and the recommendation is to be submitted to the Secretary-General for decision.

22. It is doubtful whether Service Order 01/02 is capable of application to staff members who are under the direct supervision of the Secretary-General. However, that issue need not be pursued. The Service Order cannot detract from the ITU’s obligation to act in good faith. In this regard, it cannot detract from the organisation’s obligation to inform staff members of the aspects of their performance or conduct that are said to be unsatisfactory and to provide them with an opportunity to remedy the situation. The ITU contends that the complainant was well aware of the matters in respect of which his performance and conduct were said to be unsatisfactory. For present purposes, that may be accepted in relation to his post as Executive Manager, TELECOM. However, his abrupt transfer from that post deprived him of any opportunity to remedy the situation. So far as concerns his duties as Advisor to the Secretary-General, four duties were specified in the decision assigning him to that post. One concerned projects referred by the Secretary-General, two concerned proposed TELECOM support for the World Summit on the Information Society (WSIS) and the fourth was to report on the future of TELECOM. It is not disputed that no projects were referred by the Secretary-General and that the complainant was not invited to the WSIS meetings or provided with relevant documentation. The complainant did attend to the fourth duty, although apparently not to the satisfaction of the Secretary-General whose complaint with respect to his performance as Advisor was that he failed to take “any initiative to perform the duties of [the] position”. This, in itself, is an admission that no tasks were given to the complainant, that no attempt was made to inform him of any deficiencies in his performance and no opportunity was given to him to remedy the situation. Given this, it is proper to conclude that the decision to withhold the complainant’s salary increment was not taken in good faith.

23. The complaint must be allowed. As that decision is reached by reference to the pleadings and the documentary evidence, there is no need for an oral hearing and that application is refused. As another person has been appointed to the position of Executive Manager, TELECOM, it is inappropriate to order the complainant’s reinstatement. Moreover, no purpose would be achieved by making the declarations sought by the complainant. However, he is entitled to material and moral damages. Although the complainant seeks payment of material damages equivalent to his salary until his retirement age of 65, damages should be limited to the salary he would have received if his contract had expired on 25 October 2004. The complainant seeks not less than 20,000 Swiss francs as moral damages; in view of the public and constant violation of his rights, the Tribunal grants him 30,000 francs. He should be granted costs in the sum of 10,000 francs.

DECISION

For the above reasons,

1. The Secretary-General’s decision of 30 August 2004 is set aside.

2. The ITU shall pay the complainant an amount equivalent to the salary increment that he would have been paid for the period from 1 November 2003 until 18 January 2004, together with interest thereon at the rate of 8 per cent per annum until the date of payment.
3. The ITU shall pay the complainant an amount equivalent to his full salary, including the salary increment, from 19 January 2004 until 25 October 2004, together with interest at the rate of 8 per cent per annum from appropriate dates. The complainant must give credit for any salary earned during that period.
4. The ITU shall also pay the complainant moral damages in the sum of 30,000 Swiss francs and costs in the sum of 10,000 francs.
5. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet